

D8snjoh1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 BRANDI JOHNSON,

4 Plaintiff,

5 v.

12 CV 4460 (HB)

6 LISA STEIN, ROB CARMONA and
7 PHIL WEINBERG,

8 Defendants.

-----x

9 New York, N.Y.
10 August 28, 2013
9:45 a.m.

11 Before:

12 HON. HAROLD BAER, JR.,

13 District Judge

14 APPEARANCES

15 PHILLIPS & PHILLIPS
Attorneys for Plaintiff

16 BY: MARJORIE MESIDOR
ALEX UMANSKY

17 GORDON & REES, LLP
18 Attorneys for Defendants

19 BY: DIANE KREBS
KUUKU ANGATE MINNAH-DONKOH

20 Also present: Daphney Guillaume, Esq.
21
22
23
24
25

D8snjoh1

1 (Trial resumed)

2 (In open court; jury present)

3 LISA STEIN, resumed.

4 THE COURT: Good morning, everybody.

5 All right. The plaintiff is in the midst of cross.

6 We're ready to listen.

7 MS. MESIDOR: Thank you, your Honor.

8 CROSS EXAMINATION (Continued)

9 BY MS. MESIDOR:

10 Q. Ms. Stein, you realize you are still under oath, correct?

11 A. Yes.

12 Q. Before we parted yesterday, we were discussing the job
13 description that you had given to Ms. Johnson. We were
14 discussing the job description that you had given Ms. Johnson
15 at the time of her interview, correct?

16 A. I guess so, yes.

17 Q. That job description is not the same job description that
18 is in Defendants' Exhibit G, correct?

19 A. No.

20 Q. Now, the job description that you gave to Ms. Johnson at
21 her interview does not mention Pathways Out of Poverty, does
22 it?

23 A. That's not my recollection.

24 Q. Well, let me allow you to refresh your recollection.

25 MS. MESIDOR: May I approach the witness?

D8snjohl

Stein - cross

1 THE COURT: You may.

2 MS. MESIDOR: Your Honor, sir?

3 THE COURT: I said you may. Very rarely do I speak
4 too low that people don't hear me, but indeed I am inviting
5 you.

6 MS. MESIDOR: Your Honor, I have a copy for you as
7 well.

8 May I approach?

9 THE COURT: I think it is in the exhibit book. So I
10 am fine.

11 MS. MESIDOR: Your Honor, no, it is not in the exhibit
12 book.

13 MR. MINNAH-DONKOH: Your Honor, we may have a sidebar.

14 MS. KREBS: May we approach and have a sidebar for a
15 moment.

16 THE COURT: No.

17 MS. KREBS: I guess I will object in open court. This
18 document was never produced during discovery.

19 MS. MESIDOR: Your Honor, I have a Bates-stamped copy
20 of the document right here. It was produced.

21 THE COURT: If you were going to have this concern,
22 everybody knew where you were yesterday, everybody was talking
23 about the same piece of paper or pieces of paper. Couldn't you
24 have gotten your act together before we came to court so that
25 we don't argue before the jury. Haven't I made that concept

D8snjohl

Stein - cross

1 clear to you over the last few days? Just quietly, together,
2 see if you can work it out, and don't take any time from the
3 jury. They are in my view national treasures.

4 THE COURT: Ms. Stein, you realize that you are still
5 under oath to tell the truth?

6 THE WITNESS: Yes.

7 (Counsel conferred)

8 THE COURT: Have we resolved that issue, for the
9 moment in any event?

10 Let's go.

11 BY MS. MESIDOR:

12 Q. Ms. Stein, I have given you a document. Now that job
13 description is the job description that you gave Ms. Johnson,
14 isn't it?

15 A. I don't recall.

16 THE COURT: Can you mark it. I don't care what you
17 mark it. You can mark it late for lunch. But let's have it
18 identified. We will mark it X. All right. I guess there is
19 an X.

20 MS. MESIDOR: Right.

21 THE COURT: We will mark it XX. Is there a XX?

22 MS. MESIDOR: No, your Honor, there is no XX.

23 THE COURT: Now we know what we are talking about.

24 Go ahead.

25 BY MS. MESIDOR:

D8snjohl

Stein - cross

1 Q. I would like the document that I just have handed to you
2 marked for identification as Exhibit XX. Do you have the
3 document before you?

4 A. I do.

5 Q. That document does not say anything about the Pathways Out
6 of Poverty grant, does it?

7 A. This document does not.

8 Q. But this document does correctly state that Ms. Johnson
9 reports to the president, as we know that she did when she
10 commenced her employment, correct?

11 A. That's not what this document says.

12 Q. The document that you have before you does not say reports
13 to president?

14 A. It does not say Brandi Johnson on it.

15 Q. That wasn't the question that I asked you. I asked you
16 whether this document indicates that the person who was in the
17 affiliate services coordinator position reports to the
18 president. Is that correct?

19 A. In this document, correct.

20 Q. And that is the person that Ms. Johnson was reporting to at
21 the time of her hire, isn't that correct?

22 A. Correct.

23 Q. I would like you to take this document and compare it to
24 Defendants' Exhibit G.

25 A. Yes.

D8snjohl

Stein - cross

1 Q. Do you have both documents in front of you?

2 A. I do.

3 Q. Now, both documents say affiliate services coordinator,
4 correct?

5 A. Correct.

6 Q. One says that she reports to the fiscal department, which
7 is not the one that you gave her at interview, correct?

8 MS. KREBS: Objection, your Honor. This document
9 isn't in evidence. She's now discussing and describing and
10 continuing to describe contents of a document that is not in
11 evidence.

12 THE COURT: Please.

13 MS. KREBS: I apologize.

14 THE COURT: You are into this three days already. You
15 want this in evidence? Is that what you are planning to do
16 eventually?

17 MS. MESIDOR: Yes, your Honor.

18 THE COURT: It is in evidence.

19 (Plaintiff's Exhibit XX received in evidence)

20 MS. MESIDOR: Thank you, your Honor.

21 MS. KREBS: Your Honor it is not on the exhibit list.

22 THE COURT: I don't --

23 MS. MESIDOR: Your Honor, at this time we would like
24 to publish the document to the jury.

25 THE COURT: Very well.

D8snjohl

Stein - cross

1 We went through this with you yesterday in terms of
2 of impeachment. I guess we said we would have a little
3 discussion about impeachment after class, but we didn't get
4 around to it, but we will do it this afternoon.

5 This is perfectly reasonable impeachment activity. It
6 can happen at any time during the course of cross-examination
7 with almost any document or a milking stool.

8 OK. Let's go.

9 BY MS. MESIDOR:

10 Q. Ms. Stein, do you have Exhibit G in your hand?

11 A. Yes.

12 Q. Exhibit G was the document that you said you did not give
13 Ms. Johnson at the time of her interview, correct?

14 A. Correct.

15 Q. Exhibit G does not indicate Ms. Johnson's name on it, does
16 it.

17 A. No.

18 Q. When you compare it to, the exhibit that has now been moved
19 into evidence Exhibit XX --

20 A. Yes.

21 Q. -- to Exhibit G, Exhibit XX does not say the Pathways Out
22 of Poverty grant anywhere on it, does it?

23 A. No.

24 Q. In fact, Exhibit XX is a lot more general than that of
25 Exhibit G, isn't it?

D8snjohl

Stein - cross

1 A. Yes.

2 THE COURT: The jury decides, just to complete the
3 story for the future. The jury then decides whether this is
4 impeachment material or it's not impeachment material, whether
5 it's material itself or not material, and it will all come out
6 in the charge.

7 Q. Now, Ms. Stein, I'm going to call your attention to Exhibit
8 19. It should be in the second binder that is before you. It
9 is already a document that's been in evidence. Do you have it
10 before you?

11 A. Yes.

12 Q. Now, Exhibit 19 is Ms. Johnson's offer letter, correct?

13 A. Yes.

14 Q. Within that offer letter Pathways Out of Poverty again is
15 not mentioned anywhere in that offer letter, is it?

16 A. No.

17 Q. Prior to working at STRIVE, Ms. Johnson had no prior
18 experience with dream jobs programs, isn't that correct?

19 A. I don't --

20 THE COURT: To your knowledge.

21 THE WITNESS: To my knowledge, no, I don't think so.

22 BY MS. MESIDOR:

23 Q. In fact, isn't it true that the Pathways Out of Poverty
24 grant had already been in implementation four months before
25 Ms. Johnson was even hired?

D8snjohl

Stein - cross

1 A. I think that needs some clarification.

2 Q. I'm going to draw you to Defendants' Exhibit A, which is
3 already in evidence, that we discussed yesterday?

4 A. OK.

5 Q. Now, Defendants' Exhibit A is the grant notification
6 letter. Do you see that?

7 A. Yes.

8 Q. Do you see the date of January 29, 2010 on there?

9 A. Yes.

10 Q. And that's the start date of the grant, correct?

11 A. Yes. Except that the notification date --

12 Q. Move to strike.

13 A. -- that we received this document --

14 Q. You have answered me question.

15 A. -- was in January. That's when we received it.

16 MS. MESIDOR: Your Honor.

17 THE COURT: Ms. Stein, you really can't talk when she
18 is talking because the reporter can't take it down. If it were
19 you and me, it would be all right, because he would take me.
20 But in this instance he really doesn't know who to take, so he
21 takes nobody.

22 THE WITNESS: I apologize.

23 THE COURT: Do you want to start over again.

24 MS. MESIDOR: Sure.

25 BY MS. MESIDOR:

D8snjohl

Stein - cross

1 Q. Now, the date on the grant notification letter is January
2 29, 2010, correct?

3 A. The start of the grant term is January 29.

4 Q. OK. Ms. Johnson began at STRIVE May 3, 2010, isn't that
5 correct?

6 A. Yes.

7 Q. Now, prior to Ms. Johnson arriving at STRIVE, there was a
8 woman by the name of Jill Poklemba who was working with the
9 green grants initiative, correct?

10 A. She was the first person in the position, correct.

11 Q. And Ms. Jill Poklemba had already some experience in green
12 jobs training, correct?

13 A. No. She was a grant writer. She had an interest and a
14 passion --

15 MS. MESIDOR: Move to strike as nonresponsive. There
16 is no question pending.

17 BY MS. MESIDOR:

18 Q. Jill Poklemba was the contact person for the green
19 initiatives grant, correct?

20 A. Because she submitted the grant online.

21 Q. When you submitted the grant online, were you the contact
22 person?

23 A. If I made the submission, I would be the contact person,
24 correct.

25 Q. But Jill Poklemba was also the person that was in charge of

D8snjohl

Stein - cross

1 the program, isn't that correct?

2 A. No.

3 MS. MESIDOR: May I approach the witness, your Honor.

4 THE COURT: You may.

5 MS. MESIDOR: Before I do that.

6 Ms. Stein, so if I submitted to you that Jill Poklemba
7 is on every press release and every documentation from the
8 Department of Labor regarding the green jobs grant as the
9 contact person for programming, would you say that that
10 information is incorrect?

11 A. No. To clarify, you said that that was not incorrect. And
12 I said no, it's not incorrect.

13 Q. Now, you have previously testified that you never indicated
14 to Ms. Johnson that her employment was coming to an end on
15 January 28, 2012, correct?

16 A. Yes. That's correct.

17 Q. In Defendants' Exhibit A, there were a series of personnel
18 that was highlighted as being under that grant, correct?

19 A. Exhibit A is the cover letter. It is just one page.

20 Q. Do you remember giving prior testimony about the budget
21 chart that was attached to the grant modification letter?

22 A. Yes.

23 Q. Do you remember that that same budget chart had a list of
24 personnel that was being paid under that grant?

25 A. Yes.

D8snjohl

Stein - cross

1 Q. And one of the personnel that was listed was the president,
2 is that correct?

3 A. Yes.

4 Q. After the grant was terminated, did the president take a
5 pay cut?

6 A. No.

7 Q. After the grant was terminated, did any of the other
8 positions that were on the grant take a pay cut?

9 A. No.

10 Q. The only person who was affected in terms of their salary
11 by the cutting of the grant was plaintiff, isn't that correct?

12 A. Yes.

13 Q. Now, you don't have anything in writing that indicates that
14 Ms. Johnson's position was 100 percent funded by the Pathways
15 Out of Poverty grant, correct?

16 A. Can you clarify.

17 Q. Do you have a document in writing that indicates that Ms.
18 Johnson's position was a hundred percent funded by the Pathways
19 Out of Poverty grant?

20 A. It was the budget line in the grant that was the
21 documentation.

22 Q. Other than the budget line in the -- let's go back to that.
23 The budget line in the grant says that the position that Ms.
24 Johnson had had an allocation of \$130,000, is that correct?

25 A. Correct.

D8snjohl

Stein - cross

1 Q. It was a two-year grant, correct?

2 A. Correct.

3 Q. And Ms. Johnson's salary was \$60,000, correct?

4 A. Yes.

5 Q. So for two years, \$60,000, that's \$120,000, correct?

6 A. Yes.

7 Q. So there should have been \$10,000 left, correct?

8 A. Unless we modified it, yes.

9 Q. Now, the modification that you saw on the budget line item
10 was not a decrease, but an increase, correct?

11 A. I would have to look at the document again. I don't want
12 to speak from memory.

13 Q. OK. I'm going to ask you to go through the packet of
14 exhibits that you have before you. I believe it's Exhibit E.
15 This is a document that's already been published to the jury.

16 A. I know. I am just trying to find it up here. Hold on a
17 second.

18 Q. It should be in the pile of documents that's directly in
19 front of you. The binders that you have before you are only
20 plaintiff's exhibits, and Exhibit E is a defendants' exhibit.

21 A. OK. My apologies.

22 THE COURT: Here. Why don't you take mine. Let's
23 move this along.

24 THE WITNESS: Sorry. OK.

25 MR. MINNAH-DONKOH: Your Honor, just for clarification

D8snjohl

Stein - cross

1 I believe the Exhibit is Plaintiff's Exhibit 40.

2 THE COURT: Well, these are defendants' exhibits.

3 That's what she meant. I haven't looked at it so you can't
4 prove it by me.

5 A. Just to make sure we are looking at the same thing, this
6 has a cover letter dated January 24, 2012?

7 Q. That is correct, ma'am.

8 A. OK.

9 Q. Do you see the subsequent documents that you already
10 indicated were enclosures?

11 A. Yes. So there's the grant mod., there's --

12 Q. And those are the budget line items. Do you see that?

13 A. Yes.

14 Q. Do you see where it has the coordinator position?

15 A. Correct.

16 Q. It was \$130,000 that was originally requested, correct?

17 A. Correct.

18 Q. The modification actually becomes 135-plus thousand
19 dollars, isn't that correct?

20 A. Yes.

21 Q. Is there anything in the document -- withdrawn.

22 A. But remember that this grant went longer than intended.

23 Q. There's no question pending, Ms. Stein.

24 A. It seems factual.

25 THE COURT: She can finish her answer, but I don't

D8snjohl

Stein - cross

1 think it is vital, so let's keep going.

2 THE WITNESS: Thank you.

3 BY MS. MESIDOR:

4 Q. Moving along, Ms. Stein. The incident that you described
5 in which Ms. Johnson missed a staff meeting, that was the
6 incident regarding a participant's purported sexual harassment
7 complaint, correct?

8 A. Just to clarify, this is the incident where Brandi was not
9 at a staff meeting and I texted her?

10 Q. Yes.

11 A. Correct.

12 Q. Now, STRIVE has a sexual harassment policy, correct?

13 A. Yes.

14 Q. Compliance with that sexual harassment policy is important,
15 correct?

16 A. Absolutely.

17 Q. In fact, antisexual harassment and discrimination policies
18 are actually prerequisite of the Pathways Out of Poverty grant,
19 isn't it?

20 A. Absolutely.

21 Q. So when a participant complains about possible sexual
22 harassment, that is a potential red flag if there was actually
23 a violation, isn't it?

24 A. Yes.

25 Q. That potential red flag could actually cost you funding,

D8snjohl

Stein - cross

1 couldn't it?

2 A. Yes.

3 Q. So Ms. Johnson was in fact being prudent by highlighting
4 the situation to upper management, correct?

5 MS. KREBS: Objection.

6 THE COURT: If you know, you can answer. If you don't
7 know, you can't answer.

8 A. Again, as I indicated and testified earlier, in that
9 particular situation she did have the opportunity to make a
10 complaint and didn't file one in writing.

11 Q. But that was something that was subsequent to Ms. Johnson
12 bringing the situation to the attention of managers, isn't that
13 correct?

14 A. At the time the situation was brought --

15 Q. Please answer my question, Ms. Stein.

16 A. The context is pretty important to the answer.

17 Q. The question is a yes-or-no answer. The fact that the
18 complainant did not make a written complaint, isn't that
19 something that happened after the fact that Ms. Johnson brought
20 the issue to the attention of management?

21 A. Yes.

22 Q. OK. Moving along to the situation with Dwayne Hubbard.
23 Yesterday you gave us an account that you had a meeting with
24 Mr. Carmona and Mr. Hubbard, correct?

25 A. Correct.

D8snjohl

Stein - cross

1 Q. And that during that meeting Mr. Carmona and Mr. Hubbard
2 were talking about Mr. Hubbard's relapse, and you exited that
3 meeting, is that correct?

4 A. Yes.

5 Q. Do you recall being deposed in this matter?

6 A. Yes.

7 Q. During that deposition you gave a completely different
8 account, isn't that correct?

9 THE COURT: Please. If you have it, don't
10 characterize it, unless you want to testify under oath. You
11 have it in front of you. Tell her or ask her if she made these
12 answers to these questions.

13 MS. MESIDOR: I am going to call your attention to
14 page 177, lines 11 through 16 in your deposition.

15 A. OK. Where would I find that document.

16 THE COURT: She's going to produce it. Or she's going
17 to read it to you without producing it and simply ask you
18 whether or not you made these answers to these questions.

19 Q. It is Exhibit 5 that is before you. The lines again are
20 177, lines 11 through 16. You were under oath during this
21 deposition just like you are today, correct?

22 A. Yes.

23 Q. Were you not asked the following questions and give the
24 following response.

25 A. Could I please have a minute to get to the same place that

D8snjohl

Stein - cross

1 you are.

2 Q. I am going to read it to you.

3 A. I would like to see it.

4 Q. 177, line 11.

5 A. OK.

6 Q. "I don't know if you responded to this already, and if you
7 did my apologies. Do you know who Mr. Carmona was speaking to
8 when he was being loud?

9 "A. I really can't recall at this point in time."

10 Were you asked that following question and did you
11 give that following answer?

12 A. Yes, if that's what's in the transcript.

13 Q. This was the same day that you testified that you could
14 hear quote-unquote loudness coming from Mr. Carmona's office,
15 correct?

16 A. Yes.

17 Q. And after the loudness, Ms. Johnson came to you in tears
18 about how Mr. Carmona treated her, correct?

19 A. Yes. I can't have the piece of paper in front of me. The
20 binder is too thick. The pages won't move.

21 Q. Moving along, yesterday you gave some testimony regarding a
22 tough love, no excuses approach that STRIVE takes, correct?

23 A. Correct.

24 Q. Isn't that tough love no excuses approach limited to just
25 the participants?

D8snjohl

Stein - cross

1 A. I would say that it is part of the organizational culture
2 as well.

3 Q. So the tough love no excuses approach that you indicated
4 that was part of the organizational culture, does that include
5 being called a nigger?

6 MS. KREBS: Objection.

7 THE COURT: Overruled.

8 A. I think I need you to break that question down. It
9 requires a little bit more context.

10 Q. I gave you the context. The tough love, no excuses
11 approach, as it relates to staff, does that include being
12 called a nigger?

13 A. If the term was being used with derogatory intent, then
14 that would not be part of the tough love culture.

15 Q. But not only just derogatory intent, but also perceived
16 derogatory indent, isn't that correct?

17 A. Again, I think it would depend on the situation.

18 Q. I am going to call your attention back to your deposition.
19 Page 157, line 19.

20 A. Again, I can't get to and read along with you on the pages.

21 Q. I am going to read it to you, Ms. Stein.

22 A. Thank you.

23 Q. Page 157, line 19, were you not asked the following
24 questions and did you not give the following response:

25 "Sure and I understand that. Now, the very elaborate

D8snjohl

Stein - cross

1 scenario that you just gave, participants speaking to them at
2 their own level and an employee reiterating what happened in a
3 participant meeting to a supervisor is not the context I was
4 discussing."

5 MS. KREBS: I'm sorry, your Honor. I apologize. But
6 I object. Before she reads it into the record, this is not an
7 excerpt that is impeaching of the answer that the witness just
8 gave.

9 MS. MESIDOR: Your Honor, how could counsel possibly
10 know that until I finish reading it.

11 MS. KREBS: Because I have it in front of me.

12 THE COURT: It's really a jury question as to whether
13 that indeed impeaches the testimony of the witness or not.
14 Obviously, don't read something that has nothing to do with
15 what the questions are. But they have to decide what its
16 weight is, if it has any weight. Thank you very much.

17 MS. MESIDOR: If I may continue, your Honor?

18 THE COURT: You may. But be careful, because we're
19 really going far afield from what I think might be relevant
20 here.

21 MS. MESIDOR: I understand that, your Honor.

22 Q. Continuing: "The context is, that I was discussing is
23 supervisor employee in an office, not discussing participants.
24 Supervisor discussing the employee's behavior and the
25 supervisor calling the employees a nigger. Would that be

D8snjohl

Stein - cross

1 violative of STRIVE's policies and procedures?"

2 And did you not give the following answer:

3 "If the intent and context of this use of the word,
4 was either intended as derogatory or perceived as derogatory,
5 then, yes."

6 Did you not give that hear that following --

7 THE COURT: Did you make that answer to that question.
8 That is all you need to say.

9 Q. Did you make that answer to that question?

10 A. Yes.

11 Q. Is calling people dumb as shit part of STRIVE's tough love?

12 THE COURT: I think she's testified that it was sort
13 of the culture of this operation. I am not sure whether or not
14 going through each and every item and language or piece of
15 language is really going to be valuable to anybody, but that's
16 what you are doing. So let's move on.

17 BY MS. MESIDOR:

18 Q. Now, STRIVE's antidiscrimination policy prohibits the use
19 of racial slurs, correct?

20 A. Correct.

21 Q. And nigger is a racial slur, correct?

22 A. It can be a racial slur, correct.

23 Q. Moving along to the Christina Saenz situation. You
24 indicated that Exhibit L, which is already in evidence and
25 which has been produced to the jury, was given both to

D8snjohl

Stein - cross

1 Ms. Johnson and Ms. Saenz, isn't that correct?

2 A. Yes.

3 Q. And it is your testimony that there was no differentiation
4 between what was given to Ms. Saenz as it related to her and
5 that which was given to Ms. Johnson as it related to her,
6 correct?

7 A. Correct.

8 Q. But we don't have a copy of Ms. Saenz' writeup, do we?

9 A. I can't answer that question.

10 Q. Do you have a copy of Ms. Saenz's writeup with you here
11 today?

12 A. I do not.

13 Q. Now, the account that you gave us yesterday was that this
14 writeup was precipitated by Ms. Johnson ordering somebody to
15 lock Ms. Saenz out of a particular database, is that correct?

16 A. It was sort of the straw that broke the camel's back in the
17 chain of events.

18 Q. But this drama that you describe, you were not even there
19 for it, were you?

20 A. Which drama?

21 Q. The drama that broke the camel's back, so to speak?

22 A. Again, I am going to ask you to specify.

23 Q. OK. You previously indicated that this was the incident
24 that broke the camel's back, correct?

25 A. Correct.

D8snjohl

Stein - cross

1 Q. When the incident occurred between Ms. Johnson and
2 Ms. Saenz, you were not there, isn't that correct?

3 A. In particular, to clarify, you are specifying this incident
4 in January, correct?

5 Q. Correct. Not in January -- right, that's correct.

6 A. Which is it? I'm confused.

7 Q. No, I was correcting myself. In January.

8 A. Yes. I was in the office in January.

9 Q. Prior to your testimony yesterday you had indicated that it
10 was indeed another situation that precipitated the writeup of
11 Ms. Saenz and Ms. Johnson, isn't that correct?

12 A. It was continual ongoing behavior.

13 Q. I am going to draw your attention to your deposition again,
14 page 100, line 24.

15 My apologies, page 104, line 16. Were you not asked
16 the following question and did you not give the following
17 answer:

18 "Q. When you became informed of the incident of drama between
19 Ms. Saenz and Ms. Johnson, did you speak to Ms. Saenz?

20 "A. So when I came back to the office from being away, I spoke
21 to both of them because there was an analysis that needed to be
22 done and we needed to submit something, and I was disappointed
23 that there seemed to have been more time disagreeing amongst
24 themselves about how to proceed versus following the
25 instructions that I had clearly given to everybody.

D8snjohl

Stein - cross

1 "Q. Did that culminate in the memo that you previously
2 testified to?

3 "A. Not this alone.

4 "Q. I understand that it was not this alone. Did the memo
5 that you previously testified to, was it a culmination of all
6 of what you just indicated?

7 "A. Yes. And including that each had sworn to me that they
8 had a conversation and they were good and it was the end of the
9 year and it was holiday time and in the spirit of the holidays
10 they had made a resolution they were going to work better
11 together and like that, and it didn't last."

12 Was that the questions that you were asked and the
13 answers that you had given?

14 A. Yes, but it is important to clarify. Like, as my statement
15 indicated, that was in December before the holidays.

16 Q. Ms. Stein, there is no question pending.

17 A. I apologize. The question was -- I'm sorry, your Honor.

18 THE COURT: I am going to let her finish her answer.

19 MS. MESIDOR: OK.

20 A. I was out of the country at the time that the e-mail dated
21 in December was written. I was back in the office. The
22 incident that you are referring to with Ms. Graham was in
23 January. So time and context is critically important in the
24 chronology.

25 Q. But, Ms. Stein, the incident that you gave with Ms. Johnson

D8snjohl

Stein - cross

1 and with Ms. Saenz was never brought up anywhere in your
2 deposition, was it?

3 A. I didn't control the questions in my deposition.

4 Q. But I certainly did ask you about the situation that
5 predicated the creation of the memo, did I not?

6 MS. KREBS: Objection, your Honor.

7 THE COURT: Overruled.

8 A. Again, I indicated that it is an accumulation.

9 Q. Yes or no, Ms. Stein.

10 A. I am not sure it is a yes-or-no question.

11 Q. The question was, did I not ask you what were the incidents
12 that predicated the memorandum that was placed in both
13 Ms. Saenz's and Ms. Johnson's personnel file?

14 A. That is what you asked.

15 Q. OK. Now Exhibit, L which is the actual memorandum that was
16 placed in Ms. Brandi Johnson's personnel file, nowhere in that
17 exhibit does it say anything about Ms. Johnson locking
18 Ms. Saenz out of the database, does it?

19 A. There is no specific incident listed at all.

20 Q. However, on the second page of that exhibit, it does list a
21 very detailed code of conduct that was supposed to take place
22 with Ms. Saenz and Ms. Johnson, isn't that correct?

23 A. Yes.

24 Q. Nowhere in that detailed code of conduct does it mention
25 anything about locking somebody out of a database, isn't that

D8snjohl

Stein - cross

1 correct?

2 A. No, it does not.

3 Q. Moving right along --

4 THE COURT: That is refreshing.

5 MS. MESIDOR: I'm sorry, your Honor?

6 THE COURT: I said that's refreshing.

7 MS. MESIDOR: I'm learning, Judge.

8 Q. Ms. Stein, now you were present when Mr. Carmona slammed
9 the door in Ms. Johnson's face, correct?

10 A. I wouldn't characterize it like that.

11 Q. Were you present in an incident when Ms. Johnson approached
12 the door of your office and knocked on it?

13 A. Yes.

14 Q. And after she knocked on it, didn't Mr. Weinberg tell
15 Ms. Johnson to come in?

16 A. I am not sure if that was exactly what was said.

17 Q. Well, let me refresh your recollection. Going to your
18 deposition again, page 136, line 20.

19 A. I can't --

20 Q. 136 beginning at line 20:

21 MS. KREBS: Excuse me, your Honor. May we approach
22 and take the binder and take out her deposition transcript so
23 that she can have it in front of her when portions are read?

24 THE COURT: She's welcome to have one if she needs it.
25 Even I am welcome to have one, but I don't have one either.

D8snjohl

Stein - cross

1 MS. MESIDOR: Your Honor, it is Exhibit 5 in
2 plaintiff's binder.

3 THE COURT: I just don't have the transcript of the
4 deposition.

5 MS. MESIDOR: Yes, that's the transcript. It's
6 Plaintiff's Exhibit 5, Lisa Stein's deposition.

7 BY MS. MESIDOR:

8 Q. When you were deposed, you had previously indicated that
9 when Ms. Johnson knocked on the door that you had indicated
10 that you were in a meeting, is that correct?

11 A. That's what I recalled, correct.

12 Q. But that is not exactly what took place, is it?

13 A. That is what I recalled in my deposition.

14 Q. OK. Now, going to page 136, line 20 to 25 --

15 MS. KREBS: Your Honor, may I just ask that we wait
16 one moment while we give her the transcript.

17 THE COURT: Absolutely. She certainly asked you.

18 THE WITNESS: Thank you.

19 MS. KREBS: You're welcome.

20 BY MS. MESIDOR:

21 Q. Ms. Stein, do you have a different recollection today than
22 you did at your deposition as to whether or not you had said we
23 are in a meeting?

24 A. Can you please just give me the page number. I apologize.

25 Q. My question to you does not have to do -- I'm asking you,

D8snjohl

Stein - cross

1 do you have a different recollection? You just testified that
2 your recollection at the deposition was that when Ms. Johnson
3 knocked on the door that you said that you were in a meeting,
4 correct?

5 A. Correct.

6 Q. I'm asking you today --

7 A. I'm simply asking for a reference of a page you're
8 referring to.

9 Q. I'm not there yet.

10 A. OK.

11 Q. OK. Now, I'm asking you, do you have a different
12 recollection today than what you had at your deposition as to a
13 response when Ms. Johnson knocked on the door?

14 A. I am not sure what you mean by a different recollection.

15 Q. Do you still maintain that when Ms. Johnson knocked on the
16 door that you said that you were in a meeting?

17 A. I don't because you produced a tape that I was unaware of.

18 Q. On that tape, nowhere does it indicate anyone saying to
19 Ms. Johnson after she knocked on the door that the two of you
20 were in a meeting, correct?

21 A. Correct.

22 Q. At one point Ms. Johnson opened the door, correct?

23 A. Yes.

24 Q. When Ms. Johnson opened the door, she said that she needed
25 to speak to you regarding an incident that just happened with

D8snjohl

Stein - cross

1 Jamar Cooks, isn't that correct?

2 A. She was looking at Phil and speaking to Phil and not to me.

3 Q. When I said you I meant in quotes?

4 A. I am not sure what that means.

5 Q. OK. But she said it, isn't that true?

6 A. To whom?

7 Q. Now we are up to did she actually say it?

8 A. Yes, that is what she said.

9 Q. OK. And in response to that, Mr. Carmona says, No, you do
10 not, isn't that correct?

11 A. As I recall, that is what is on the tape, correct.

12 Q. OK. To which Ms. Johnson says, Don't close the door on me,
13 correct?

14 A. To the best of my recollection of the tape, correct.

15 Q. Then on the tape we hear the door close, isn't that
16 correct?

17 A. Correct.

18 Q. You did nothing, correct?

19 A. No, I guess not.

20 Q. By that time, Ms. Johnson had already filed a complaint
21 against you, correct?

22 A. I believe so, yes.

23 Q. Moving along, yesterday you testified that there was a time
24 after the January 27, 2012 memo that you indicated that you
25 were going to terminate Brandi, is that correct?

D8snjohl

Stein - cross

1 A. I'm sorry. Can you clarify the question.

2 Q. Sure. Do you know the memo that I'm referring to, the
3 disciplinary memo?

4 A. Are you referring to this, Exhibit L?

5 Q. Yes.

6 A. Yes. In that memo it indicates disciplinary action up and
7 to termination.

8 Q. That wasn't the question that I was asking. What I was
9 asking you is yesterday during your direct examination you were
10 asked whether, prior to Ms. Johnson being terminated in June
11 2013, whether you had contemplated terminating Ms. Johnson,
12 correct?

13 MS. KREBS: Objection, June 2013.

14 MS. MESIDOR: Sorry, June 2012. Apologies.

15 A. Again I am not understanding what you're asking me.

16 Q. OK. Prior to June 2012 you previously testified that you
17 had considered terminating Ms. Johnson, isn't that correct?

18 A. At the time of this memo we had a discussion, and
19 Ms. Johnson indicated that she was tired of hearing this
20 feedback and having this discussion and she had other job
21 offers and she didn't need this.

22 Q. OK. So it wasn't you that was contemplating terminating
23 Ms. Johnson; it was Ms. Johnson contemplating resigning.
24 Correct?

25 A. Ms. Johnson indicated that possibility, yes.

D8snjohl

Stein - cross

1 Q. OK. Now, at some point in April or May, Mr. Weinberg had a
2 conversation with you regarding the ending of Ms. Johnson's
3 position, isn't that correct?

4 THE COURT: What year?

5 MS. MESIDOR: 2012, your Honor.

6 THE COURT: It is helpful if you give years when we
7 have dates that go into each year.

8 MS. MESIDOR: Apologies, your Honor.

9 A. Mr. Weinberg asked me for some historical data and what we
10 had done when we had closed previous federal grants.

11 Q. That was in direct relation to Ms. Johnson's position,
12 isn't that correct?

13 A. It was in reference to when there was a position a hundred
14 percent funded.

15 Q. Now, other than Ms. Johnson, was there anyone else at
16 STRIVE whose position was 100 percent funded purporting by a
17 grant at the time Mr. Weinberg asked you this question?

18 THE COURT: Sustained. Don't even answer the
19 question.

20 MS. MESIDOR: Your Honor, I'm sorry?

21 THE COURT: I sustained the objection because it's
22 bean asked and answered, and we're trying this case once. I
23 mean the effort has been to try the case once, my effort.

24 BY MS. MESIDOR:

25 Q. At the time that Mr. Carmona had the discussion with you

D8snjoh1

Stein - cross

1 about what happens with a person who is a hundred percent
2 funded by the grant, that was approximately around April or May
3 of 2012, correct?

4 MS. KREBS: Objection. She said Mr. Carmona?

5 MS. MESIDOR: I'm sorry. Mr. Weinberg.

6 A. Can you repeat the question.

7 Q. Sure. When you had the conversation with Mr. Weinberg
8 about what happens when somebody who is a hundred percent
9 funded by a grant and that grant ends, what happens, that is a
10 conversation that took place in around April or May of 2012,
11 correct?

12 A. Correct.

13 Q. By that time you had already been notified that Ms. Johnson
14 had a complaint against you and Mr. Carmona, correct?

15 A. Correct.

16 Q. Now, this lawsuit was actually files on June 7, 2012, isn't
17 that correct?

18 A. I think --

19 MS. KREBS: Objection.

20 THE COURT: If you remember.

21 MS. MESIDOR: If you recall.

22 A. I think I would need more specificity. There were
23 obviously some stages of the complaints.

24 Q. OK.

25 A. So that's just --

D8snjohl

Stein - cross

1 Q. Let me refresh your recollection. Go to Plaintiff's
2 Exhibit 9.

3 MS. KREBS: Your Honor, objection. Relevance.

4 THE COURT: We'll accept your view. Let's move on.

5 MS. MESIDOR: OK.

6 BY MS. MESIDOR:

7 Q. I'm going to represent to you that this lawsuit was filed
8 on June 7, 2012. OK?

9 A. OK.

10 Q. And Ms. Johnson was terminated June 11, 2012, isn't that
11 correct?

12 A. Yes.

13 Q. Just four days later, correct?

14 A. Yes.

15 Q. Ms. Johnson was not terminated for poor performance, was
16 she?

17 A. No.

18 Q. After Ms. Johnson was terminated, STRIVE posted a position
19 that was substantially similar to the one that Ms. Johnson had,
20 isn't that correct?

21 A. No.

22 MS. MESIDOR: May I approach the witness, your Honor?

23 THE COURT: You may.

24 MS. MESIDOR: Your Honor, I have a copy for you as
25 well.

D8snjohl

Stein - cross

1 BY MS. MESIDOR:

2 Q. I have a document for identification purposes only I am
3 going to refer to as Exhibit YY. Do you have the document
4 before you, Ms. Stein?

5 A. Yes, I do.

6 Q. Now I want you to compare that to the previous document
7 that I had given you, Exhibit XX.

8 A. OK.

9 Q. Now, Ms. Stein, when you do a comparison of the document
10 that I have previously marked as Exhibit YY -- which is a
11 posting of an idealist position dated August 14, 2012 from
12 STRIVE, correct?

13 A. I'm sorry. I was reading the document. I apologize.

14 Q. Exhibit YY.

15 A. Can you repeat. Which one is YY?

16 Q. The one that looks like this one.

17 A. This one.

18 Q. Do you see?

19 A. The idealist, OK.

20 Q. It is an idealist posting, correct?

21 A. Yes.

22 Q. It was posted on August 14, 2012, correct?

23 A. Yes.

24 Q. Just a month after Ms. Johnson was terminated, isn't that
25 correct?

D8snjohl

Stein - cross

1 A. A little longer than that.

2 Q. When you compare that idealist posting to Exhibit XX, which
3 I previously gave to you?

4 A. Yes.

5 Q. Do you see that?

6 A. Yes.

7 Q. They are substantially similar, aren't they, in terms of
8 the duties and responsibilities?

9 A. I think I would ask you to be specific because I think
10 there is some distinct differences.

11 Q. Would you like me to go through line by line with you?

12 A. I could highlight what I think is significantly different.

13 Q. I submit to you that there are one, two, three, four, five,
14 six, seven, eight bullet points on the job duties list --

15 MS. KREBS: Objection, your Honor.

16 Q. -- that is on the document marked for identification YY,
17 correct?

18 THE COURT: I don't think we ought to spend this much
19 time on this. Why don't you put it in evidence and the jury
20 can make their own decision.

21 MS. MESIDOR: Your Honor, we would like to move
22 Exhibit YY into evidence.

23 THE COURT: Without objection I presume, but if there
24 is an objection it's overruled, YY will be admitted and XX will
25 be admitted.

D8snjohl

Stein - cross

1 (Plaintiff's Exhibit YY received in evidence)

2 MS. MESIDOR: Your Honor, I'm producing document over
3 to the jury?

4 THE COURT: But you keep asking questions.

5 MS. MESIDOR: OK.

6 THE COURT: Not too many either.

7 MS. MESIDOR: Understood, your Honor.

8 THE COURT: Do you have a question?

9 MS. MESIDOR: Yes, I do, your Honor.

10 THE COURT: Will you put it.

11 MS. MESIDOR: Thank you.

12 BY MS. MESIDOR:

13 Q. Moving away from these two documents, Ms. Stein.

14 A. Uh-huh.

15 Q. Now that both documents are in evidence and the jury has
16 both documents, they can compare and contrast the two.

17 MS. KREBS: Objection, your Honor.

18 MS. MESIDOR: Moving along.

19 THE COURT: Yes. We are moving along. Please just
20 ask questions. It's really enough of a job for you.

21 If you have any more. But if you don't, none of us
22 will be unhappy.

23 MS. MESIDOR: I am just reviewing my notes, your
24 Honor. I may be completed.

25 I have no further questions for this witness, your

D8snjohl

Stein - cross

1 Honor.

2 THE COURT: Do you have any brief redirect?

3 MS. KREBS: I have some redirect, your Honor. Thank
4 you.

5 REDIRECT EXAMINATION

6 BY MS. KREBS:

7 Q. Good morning, Ms. Stein.

8 A. Good morning.

9 Q. You testified on cross that you did not specifically tell
10 Ms. Johnson that the date of her ending her employment was
11 either January 28, 2012 or June 30, 2012. Do you recall that
12 testimony?

13 A. Yes.

14 Q. But without identifying those specific dates, had you told
15 her that her term of employment was tied to, connected to the
16 grant?

17 A. Ms. Johnson was clearly aware that her position was 100
18 percent funded by the grant.

19 Q. You testified on cross that you did not, in response to a
20 specific question about the original job description, that you
21 had not produced one during discovery. Do you still have a
22 copy of that?

23 A. Job descriptions would evolve over time. I would usually
24 go in and edit a document and save it, and I didn't necessarily
25 have a need to save previous versions.

D8snjohl

Stein - redirect

1 However, what I find interesting --

2 THE COURT: Please.

3 THE WITNESS: No, I --

4 MS. MESIDOR: Objection.

5 THE COURT: There's no question pending.

6 THE WITNESS: OK.

7 THE COURT: This woman has been asking question for
8 years. She knows how to ask questions. She is going to ask
9 you some more.

10 THE WITNESS: All right. It sounds like a plan.

11 Q. I would like you to turn to Exhibit H, which is the
12 performance evaluation that was dated September 15, 2010.

13 MS. MESIDOR: Objection, your Honor. Outside the
14 scope of cross.

15 MS. KREBS: No, it's not, your Honor. I'm directly
16 responding to one of the points that she made, and I will show
17 that in a moment, your Honor.

18 THE COURT: I wish you would all just let me do my
19 job. I know it is a little one, like I told the witness
20 yesterday, but whatever it is, your tax dollars are paying for
21 it. You wouldn't want them to go to waste, right? You
22 referred her to H?

23 MS. KREBS: Yes, your Honor.

24 THE COURT: And the question is?

25 Q. Do you recall in your testimony on cross that you were

D8snjohl

Stein - redirect

1 asked about a rating of a 3 under point number one accuracy and
2 thoroughness of work?

3 A. Yes.

4 (Continued on next page)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

D8snjohl

Stein - redirect

1 BY MS. KREBS:

2 Q. Do you recall that that was asked of you in the context of
3 your comment about the rewriting of narratives by Ms. Johnson?

4 MS. MESIDOR: Objection.

5 THE COURT: I will let you answer it, but one more
6 leading question and your examination is over.

7 MS. KREBS: Yes, your Honor.

8 A. Yes.

9 Q. Can you identify, if at all, any other location in this
10 document discussing narratives?

11 A. Yes. If you go to Bullet 4 under Organizational Skills, a
12 rating of two is provided and a narrative stating: In
13 preparation of quarterly reporting the same issue has also
14 occurred. The final review and editing taking place on the day
15 the report is due. Pieces of the report can be done in advance
16 and reviewed so that when we final data from other entities is
17 being reviewed at the last minute.

18 Q. Thank you. You can put that document away.

19 With respect to the questions regarding the
20 notification of the grant, when did STRIVE actually receive
21 notification of the grant?

22 MS. MESIDOR: Objection, your Honor. Outside --

23 THE COURT: Overruled.

24 A. Can you specify which grant?

25 Q. I apologize. The Pathways Out of Property grant, the one

D8snjohl

Stein - redirect

1 that had the initiation date of January 28th, 2010.

2 A. If you look at the date of the grant officer who signed and
3 authorized the funding, it is February 19th. So I can't recall
4 the exact day, but it would be some time after that date that
5 we received notification and then it takes a couple of weeks
6 you have to execute your contract, you have to set up your bank
7 account for funds to draw. It takes about three weeks, four
8 weeks to get operational. So, in fact, I would say that we did
9 not start operations --

10 MS. MESIDOR: Objection, move to strike.

11 A. -- until about March.

12 THE COURT: It seems to me that we have heard most of
13 this before, which is really what I try desperately not to have
14 happen. I will sustain the objection. Strike the answer.

15 Q. Do you recall being asked about a woman by the name of Jill
16 Poklemba?

17 A. Yes.

18 Q. When Ms. Poklemba was originally with STRIVE prior to the
19 grant being granted, what was her position?

20 A. Development.

21 Q. What does that mean?

22 A. Grant writing.

23 Q. Prior to the grant, the Pathways grant being granted, what,
24 if any, involvement did she have with that process?

25 A. To clarify, grant writing?

D8snjohl

Stein - redirect

1 Q. With respect specifically to the Pathways grant?

2 A. She took the lead in writing the application to the
3 Department of Labor and working with everyone who needed to
4 produce some piece for that document and she submitted online
5 an assistant called Grant.gov and when you submit online, you
6 are listed as the contact. I think they call it, yeah, the
7 program contact.

8 Q. Subsequent to the grant being approved what, if any,
9 changes occurred with respect to Ms. Poklemba?

10 A. To clarify, before the grant was approved?

11 Q. Upon the grant being approved.

12 A. Ms. Poklemba was offered the position of affiliate services
13 coordinator.

14 Q. Did she accept?

15 A. Yes.

16 Q. And what occurred with that?

17 A. She began and about three or four weeks into that new
18 position, she resigned from the organization.

19 Q. I don't want to go through everything before, but at that
20 point is that where the search began that resulted in
21 Ms. Johnson?

22 MS. MESIDOR: Objection.

23 THE COURT: Sustained.

24 Q. With respect to your deposition testimony about the
25 incident regarding Dwayne Hubbard where you testified that you

D8snjohl

Stein - redirect

1 didn't recall who was in the office at the time, was that --

2 MS. MESIDOR: Objection.

3 THE COURT: Overruled.

4 Q. -- was that your truthful testimony at the time you gave it
5 in the deposition?

6 A. Yes.

7 Q. What, if anything, has refreshed your recollection with
8 respect to that incident?

9 A. The discussions that have been subsequent to the
10 proceedings that we have seen here this week.

11 Q. With respect to Exhibit L that opposing counsel showed you
12 with the January 27th, 2012 writeup to Ms. Johnson --

13 A. Yes.

14 Q. -- can you please identify where, if at all, there is a
15 mention of an incident that occurred in January as opposed to
16 the incident that occurred in December?

17 MS. MESIDOR: Objection, your Honor.

18 THE COURT: Overruled.

19 A. I don't see a specific listing of the incident.

20 Q. I apologize. Not description of the incident, but the fact
21 that there was an incident that occurred in January looking at
22 the first page and first paragraph.

23 MS. MESIDOR: Objection, your Honor.

24 THE COURT: I will allow it.

25 A. Can you clarify the question, please?

D8snjohl

Stein - redirect

1 Q. I would ask you to demonstrate or to identify for the jury
2 where, if at all, in this document you mention there was
3 another incident that occurred in January as opposed to the
4 incident that you were asked about before December?

5 THE COURT: How is she going to demonstrate that?

6 A. End of paragraph one.

7 THE COURT: When I am talking, you don't talk.

8 THE WITNESS: Sorry.

9 THE COURT: She can't really get it. So it is useful.
10 It is like an exercise in futility. It is not that I care.
11 You can talk over me any time you want, but we're not going to
12 have a record. There is no sense of you talking over me
13 because there will not be any record.

14 Is that perfectly clear?

15 THE WITNESS: I got it.

16 THE COURT: Let's start again.

17 MS. KREBS: Your Honor, would you like me to restate
18 my question?

19 THE COURT: Please.

20 MS. KREBS: Thank you, your Honor.

21 BY MS. KREBS:

22 Q. Please identify or point out to the jury where, if at all,
23 in this document does it indicate that there was another
24 incident that occurred in January as opposed to the incident
25 that you described previously in December?

D8snjohl

Stein - redirect

1 MS. MESIDOR: Objection.

2 THE COURT: You have an objection. You don't need to
3 have two objections to the same question. You would be
4 embarrassed in front of the Court of Appeals if they were to
5 see that. They would think that you figured they could not
6 read it the first time.

7 You can answer if you have a recollection now of the
8 question since we talked about it.

9 A. The last sentence of the first paragraph in the cover of
10 the memo.

11 THE COURT: Everybody has a copy I suppose so you can
12 read it if you like.

13 A. However, on January 25th there was another incident that
14 demonstrated a continued inability to maintain this as a status
15 quo.

16 Q. Turning your attention to the portion of your testimony on
17 cross-examination about the incident where there was a meeting
18 and the door was closed when Ms. Johnson came to that meeting.
19 Directing your attention to that incident what, if anything, do
20 you recall being told to Ms. Johnson in response to her wanting
21 to come in and talk to Mr. Weinberg?

22 A. I am not sure what you are asking.

23 Q. Let me restate. In terms of the conversation that occurred
24 when Ms. Johnson opened the door what, if anything, do you
25 recall being told to her in response to her statement that she

D8snjohl

Stein - redirect

1 wanted to speak to Mr. Weinberg at that time?

2 A. I mean, I recall Phil indicating to her he would speak to
3 her afterwards.

4 Q. Do you recall any mention of the purpose of why the three
5 of you were in that office at that time?

6 A. I recall indicating we were in a meeting.

7 Q. Ms. Sharp used the word "slam" when talking about the door
8 closing. What is your recollection as to how the door was
9 closed?

10 A. Rob closed the door.

11 Q. And in terms of the strength or force of the door closing,
12 could you please identify your recollection of that?

13 THE COURT: You know, this is all material you could
14 is elicited on direct. That is not what redirect is about.

15 MS. KREBS: Actually, your Honor, this is one of the
16 incidents that your Honor did not allow me to ask.

17 THE COURT: Oh, no. I have heard about the door
18 closing from the first opening statement I think.

19 MS. KREBS: Yes. But you had told me respectfully,
20 your Honor, that I could not ask.

21 THE COURT: You had enough to do it already. We just
22 don't need it two or three different times. My view, which may
23 differ from yours, is that we have heard this testimony about
24 the door slamming the relevance of which in any event in my
25 view is minimal. But that is not my task happily. That is

D8snjohl

Stein - redirect

1 your task.

2 BY MS. KREBS:

3 Q. During your cross-examination you were asked about an
4 indication of the Pathways Out of Property grant in materials
5 that were provided to Ms. Johnson at or around the time of her
6 hire. Do you recall that line of questioning?

7 A. Can you specify, please?

8 Q. Yes. Do you recall that you were asked questions about
9 documents such as the job description that were provided to
10 Ms. Johnson at or around the time of her hire and asked
11 questions about the contents relating to the Pathways grant do
12 you recall that section of questioning?

13 A. Yes.

14 Q. I would like you to look at Defendant's Exhibit U.

15 A. Yes.

16 Q. Just for the record this is an e-mail that you sent to
17 Ms. Johnson prior to her actual start date?

18 A. Yes.

19 Q. Welcoming her to the organization?

20 A. Yes.

21 Q. I would like you to look at the last sentence in the short
22 paragraph that is the content. Could you read that aloud,
23 please?

24 A. We look forward to seeing you on the 3rd and I will send
25 you some program background next week.

D8snjohl

Stein - redirect

1 Q. What is program background? What did program background
2 refer to when you were referring to it there?

3 MS. MESIDOR: Objection.

4 THE COURT: Sustained. Did you introduce this letter
5 on your direct testimony?

6 MS. KREBS: I did not. It was actually introduced on
7 plaintiff's testimony.

8 THE COURT: It is in evidence, right?

9 MS. KREBS: It is.

10 THE COURT: Somebody has read it or at least the jury
11 has read it?

12 MS. KREBS: Yes, your Honor.

13 THE COURT: If you think you need to figure out what
14 it is that the program -- overruled. You can ask the question.

15 MS. KREBS: Thank you.

16 THE COURT: Tell us what program material is.

17 THE WITNESS: I sent the program narrative.

18 BY MS. KREBS:

19 Q. When you say "program," which program?

20 A. Pathways Out of Property narrative.

21 Q. During your cross-examination you were asked about the
22 posting that has now been entered into evidence as Exhibit YY
23 for the job of program director at STRIVE.

24 A. Correct.

25 Q. Could you please describe what that posting was -- what

D8snjohl

Stein - redirect

1 that job was about?

2 THE COURT: Do you have that in front of you?

3 THE WITNESS: I do.

4 A. This position was specific to a new initiative to work with
5 juvenile offenders, which means specifically youth who have not
6 been convicted as adults and could be as young as 14 years of
7 age. It was highly technical and very detailed in level of
8 service that needed to be provided to the participants. And
9 therefore for this position, we absolutely needed somebody who
10 had experience working with juvenile offenders and technical
11 knowledge of very complicated rules and regulations and laws
12 pertaining to minors involved in the criminal justice system.

13 THE COURT: Where is some of that language in YY?

14 THE WITNESS: Under qualifications professional
15 experience with reentry of ex-offenders and/or youth
16 development required. Must have knowledge of and experience
17 with criminal justice system, programs and issues. In
18 addition --

19 THE COURT: That's enough for me.

20 THE WITNESS: Okay.

21 THE COURT: I don't want to take anymore time than
22 necessary.

23 MS. KREBS: I want to direct her to one more bullet
24 point to be highlighted.

25 Q. Under essential duties and responsibilities of the program

D8snjoh1

Stein - redirect

1 director, could you please read into the record the fourth
2 bullet?

3 A. Provide technical assistance to affiliate sites on program
4 design launch and implementation.

5 Q. Was Ms. Johnson's position one that involved for her grant
6 development, implementation and technical assistance of the
7 substance of the program?

8 A. No.

9 Q. In this program director position did it require such --

10 THE COURT: That's it, my dear. It is over now.

11 MS. KREBS: Thank you, your Honor. Thank you

12 Ms. Stein.

13 THE COURT: You are excused. Thank you very much.

14 (Witness excused)

15 THE COURT: Do you have another witness?

16 MS. KREBS: We call Mr. Robert Carmona to the stand.

17 THE COURT: Let me caution you in front of the jury,
18 Ms. Krebs, I do not want to hear the the same testimony about
19 the same incidents a second and third time. I don't know how
20 to make that any clearer. Actually, why don't you wait. It
21 may make it clearer if we take a 10-minute recess. Why don't
22 we take a recess with the jury.

23 (Jury excused)

24 (Continued on next page)

D8snjohl

Stein - redirect

1 (In open court; jury not present)

2 THE COURT: Ms. Krebs, let's make this absolutely
3 clear. These incidents that we have now heard from day one,
4 they are repetitious and indeed sometimes different and indeed
5 each defendant has an opportunity as I noted when a witness was
6 on the stand yesterday. They each have an opportunity to tell
7 their story. That does not mean that they can tell the
8 identical same story as two or three previous witnesses have
9 already told us. Is that clear? If you read 402 and 403 under
10 the Federal Rules you will probably get that picture fairly
11 clearly. So all I want to be sure about is that you and I are
12 on the same wavelength with respect to that concern.

13 MS. KREBS: May I respond to that, your Honor?

14 THE COURT: Yeah, if you have a response.

15 MS. KREBS: I do, your Honor.

16 THE COURT: I will anxious to hear your response.

17 MS. KREBS: Obviously given the facts that of the
18 order of testimony in this case, plaintiff gets the opportunity
19 to put on her case first and describe her version of the events
20 of each of these incidents. She is making specific allegations
21 with respect it each of the individual defendants and their
22 conduct with respect to these incidents. Now that it is
23 defendants' turn to puts on the case, we require the
24 opportunity to have my clients tell their side of the story and
25 describe the incidents as they perceive it occurred. And, of

D8snjohl

Stein - redirect

1 course, it would be up to the jury to make the ultimate
2 decision as to which side is telling the correct version as
3 they see it to the extent those versions differ.

4 It is imperative to my clients so that they are not
5 prejudiced in putting on their case that they have the
6 opportunity to discuss those incidents and describe it how they
7 say that it happened. Now, I am not saying, your Honor, that I
8 need to go over every single incident if we do not dispute the
9 version of events that was already put on by the plaintiff's
10 case; but if we do, your Honor, it is imperative and in order
11 for it not be prejudicial that my clients be allowed to tell
12 the jury what they say happened. That is where my concern has
13 been and why, your Honor, to the extent, and I apologize if it
14 came off as impertinent or disrespectful, but that is where my
15 frustration had been coming when I was being told that I could
16 not -- I was not allowed to question Ms. Stein with respect to
17 some of these incidents.

18 For example, the incident with the --

19 THE COURT: This is not summation. I don't want to
20 not let you have your five-minute recess. So I think I've
21 heard everything you've said and I think you've heard
22 everything I have said. So be guided accordingly and I think
23 we'll get along fine.

24 I will repeat for the third time that these are your
25 witnesses and they are defendants and they are entitled to tell

D8snjohl

Stein - redirect

1 their story. All I am telling you is we are not going to have
2 a repetition of the same stories from the same mouths as we
3 have had before.

4 Is that clear?

5 MS. KREBS: That's understood, your Honor.

6 THE COURT: Good.

7 MS. KREBS: Thank you.

8 THE COURT: Take five.

9 (Recess)

10 THE COURT: Ms. Krebs, we were waiting for you
11 especially so that we could read in case there was any
12 misunderstanding about my view with respect to your testimony
13 or your eliciting of testimony in the future. I thought it
14 would be valuable if I just head into the record Federal Rule
15 of Evidence 403 and you can keep it close to your heart. It
16 reads like this: The Court may exclude relevant evidence if
17 its probative value is substantially outweighed by a danger of
18 one or more of the following: Unfair prejudice, confusing the
19 issue, misleading the jury, undue delay, wasting time, or
20 needlessly presenting cumulative evidence.

21 I would urge you to keep that in mind during the
22 course of this testimony and then I think we'll all get along
23 swimmingly.

24 THE DEPUTY CLERK: Jury entering.

25 (Continued on next page)

D8snjohl

Stein - redirect

1 (In open court; jury present.

2 THE DEPUTY CLERK: Please be seated.

3 Mr. Carmona, please raise your right hand.

4 ROBERT CARMONA ,

5 called as a witness by the Defendants,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. KREBS:

9 Q. Good morning, Mr. Carmona.

10 A. Good morning.

11 Q. How old are you?

12 A. 61.

13 Q. Are you married?

14 A. Yes.

15 Q. Do you have any children?

16 A. Yes. I have two. My first born is sitting there and my
17 youngest was there yesterday. They are tag-teaming.

18 Q. Do you have any siblings?

19 A. Yes. I have an older brother, an older sister, and a
20 younger brother.

21 Q. Can you tell us briefly about your young home life?

22 A. We were raised by a single mom in a housing project here in
23 New York City. My dad left, I guess, when I was seven years
24 old, and my mother raised the four of us in the projects.

25 Q. How was your mother off financially?

D8s6joh2

Carmona - direct

1 A. She started out struggling because she was an orphan. She
2 came in 1940. She got her GED then she got an LPN then she
3 ended being an RN by the time she retired.

4 Q. What position within your mindset does your mother hold for
5 you?

6 A. My moms was the world. I mean, she was a very strong
7 woman. I still have a hard time understanding how -- because
8 she came here in 1940 before the war, she was on her own by the
9 time she was 16. I don't know how she did it.

10 Q. In terms of your race and ethnicity, how do you
11 self-identify?

12 A. Sorry?

13 Q. In terms of your race and ethnicity, how do you
14 self-identify?

15 A. I am a black man of Latino descent.

16 Q. I want to ask you briefly about your young adulthood.

17 A. I started using drugs early on. I was about 13. At the
18 time I was 15, I was addicted to heroin and stayed addicted for
19 eight or nine years.

20 Q. At any point in time did you have any encounters with the
21 law?

22 A. Yeah. I have a pretty long rap sheet, in and out of jail.
23 I was using drugs. Yes, I do.

24 Q. And in connection with your use of drugs what, if any,
25 connection did the use of your drugs have with respect to

D8s6joh2

Carmona - direct

1 eventual arrests that you had in this your early 20s?

2 A. I was stealing money to support my habit and I got arrested
3 when I was 23 years old. I eventually pleaded guilty to a
4 five-year sentence. At that time in New York City, if you
5 could show that your involvement with the criminal justice
6 system had to do with using drugs, you could get an alternative
7 sentence to a drug program. My mother borrowed the money from
8 my aunt, bailed m out of jail and I went to Daytop Village and
9 they came with the Court for sentencing. I was sentenced to
10 Daytop Village with the proviso if I didn't complete, I had to
11 do the five years.

12 Q. What is Daytop Village?

13 A. Daytop Village is a residential drug-free therapeutic
14 community. It is a 24-, 30-month process. You actually live
15 there. There are a number of them that exist around the
16 country -- Phoenix House, Daytop Village, Odyssey House. There
17 are organizations like that. It is a very harsh treatment
18 process, but it works.

19 THE COURT: In your earlier answer when you say if you
20 didn't complete you would have to serve the five years, you
21 mean if you didn't complete the Daytop program, right?

22 THE WITNESS: Yes, your Honor.

23 THE COURT: How long was that program?

24 THE WITNESS: I was in Daytop for about 26 months.

25 THE COURT: Then they concluded that you were clean?

D8s6joh2

Carmona - direct

1 THE WITNESS: Yes. Yes.

2 BY MS. KREBS:

3 Q. Since going into Daytop village, have you taken any illegal
4 drugs?

5 A. No.

6 Q. What year was it approximately that you went into Daytop
7 Village?

8 A. I would tell you exactly. October 6, 1976.

9 Q. Now, you mentioned a harsh environment. Could you please
10 elaborate on that?

11 A. The thinking in the therapeutic community is the best
12 person to work with a drug addict or alcoholic is a drug addict
13 or alcoholic because they know the nuances of how they think.
14 The push is that in order to stop using drugs, you first have
15 to own the fact without excuses that you made this decisions
16 and you ended up with you being strung out. In groups they
17 have, they could be pretty harsh in your face and the intent
18 ultimately is to get the individual to accept that they have
19 some -- they had responsibility for how they ended up there.
20 For me it was the -- it changed my life.

21 Q. Throughout the course of this environment in this treatment
22 what, if any, particular stories or counselings did you receive
23 that helped you particularly to move on and accept
24 responsibility?

25 MR. UNAMSKY: Objection.

D8s6joh2

Carmona - direct

1 THE COURT: Sustained.

2 Q. You pointed out your daughter before in the courtroom?

3 A. Sorry?

4 Q. You pointed out your daughter in the courtroom?

5 A. Yes.

6 Q. How old was she when you went into Daytop Village?

7 A. Eight months old.

8 Q. What, if any, impact did her existence have on your ability
9 to change?

10 A. When I originally went into Daytop, I really didn't go in
11 with the notion of changing. I thought it was an easier bit.
12 It was co-ed, woman and men, rather than the prison
13 environment. So my first six to eight months in the program,
14 it was tough because I was jailing.

15 Q. Could you just explain what that means?

16 A. Jailing, I was doing time. I was doing time like I was in
17 jail rather than a program. And they have these groups and
18 they started talking to me about, um, what kind of life this
19 eight-month old girl would live if I kept doing what I was
20 doing and that resonated with me and when I accepted that I
21 delved knee-deep into the process.

22 Q. What, if any, comparisons were given to you with respect to
23 other members of your family and the difference between where
24 you ended up and remained?

25 MR. UNAMSKY: Objection.

D8s6joh2

Carmona - direct

1 THE COURT: Sustained.

2 Q. What, if any, other discussions in the group did you have
3 that resonated with you?

4 A. Okay. So the focus was to for people to own their
5 disposition in life. My older brother became an ordained
6 minister. In fact, he was a chaplain for the state prison
7 system before he retired several years ago. In the groups, you
8 know, at first I resisted owning my decisions if you may. And
9 then it was pointed out to me in a very robust fashion, well,
10 if you guys were raised in the same house by the same mother,
11 why is it that you are in the program using drugs and your
12 brother is an ordained minister? That -- I couldn't say that
13 and that is what made me say, Wow, it was me. Not that bad
14 things don't happen to good people, but our decisions guide our
15 life.

16 THE COURT: I think we can move on now into this
17 lawsuit.

18 MS. KREBS: Just one last question.

19 THE COURT: No.

20 Q. I would like to discuss for a moment just your educational
21 history.

22 A. Yes.

23 MS. KREBS: Is that all right, your Honor?

24 THE COURT: I assume it will only be a moment.

25 Tell us where you went to school.

D8s6joh2

Carmona - direct

1 THE WITNESS: I have a baccalaureate from the College
2 of New Rochelle and a masters in social work administration
3 from Columbia University.

4 Q. I would like you to briefly, very briefly, describe your
5 employment history in the not-for-profit sector leading up to
6 joining STRIVE.

7 MR. UNAMSKY: Objection.

8 THE COURT: Overruled.

9 A. I was in Colombia and you have to do internships to get
10 your masters. I did the -- well, let me backtrack.

11 I started my undergraduate and got my baccalaureate
12 while ways in Daytop Village. I worked during the day, lived
13 in the facility and went to school at night. I graduated about
14 a year after I left the facility. I several years later went
15 to Columbia University and I did an internship at United Way
16 and I was hired by United Way and became the gatekeeper for
17 United Way an organization seeking funding. Then I worked for
18 several organizations. I work for the Koch administration for
19 a while and then at the Wild Cat Service Corporation. And then
20 I was introduced to two guys Sam Hartwell and Tom Rodman, and
21 together we put together this state and alcohol STRIVE.

22 Q. Let's turn to STRIVE now.

23 Your title, your current title is founder, correct?

24 A. Yes.

25 Q. So how is it that you came to the title of founder? What

D8s6joh2

Carmona - direct

1 did you do to be a founder?

2 A. Well, I actually -- they had a notion, Sam and Tom, that
3 people in poor communities they have something that we all take
4 for granted or they lack something that we take for granted in
5 what we describe as work culture, the ability to take
6 constructive criticism, punctuality, teamwork, owning
7 responsibility for if you mess up on the job. That kind of
8 thing. Sam and Tom had the idea, which they wanted done and I
9 brought the concept, I thought that the concept that
10 therapeutic communities use, which is empowerment model to
11 begin not look at yourself as a victim. I thought that had
12 resonance for the employment arena and predicated STRIVE on
13 those principles and also that every client that comes through
14 we would give them a lifetime commitment of service so that
15 somebody could come back 10 years later and still get service
16 from the organization.

17 Q. Now, are you familiar with the plaintiff Brandi Johnson?

18 A. Yes, I am.

19 Q. How do you know her?

20 A. She worked for STRIVE for three years.

21 Q. When did you first become introduced to her in some
22 fashion?

23 A. She was -- we have a partner organization called the
24 Consortium For Worker Education. They do the same kind of work
25 we do, but with union members. She had worked there and a

D8s6joh2

Carmona - direct

1 friend of mine, the senior director there, asked me if I would
2 give her a shot, you know, because the contract that she was on
3 as CWE had ended and they did not have a line or need for her
4 skill set so they sent her to me and we interviewed her and
5 hired her.

6 Q. When you say "we interviewed her and hired her," who is the
7 we?

8 A. Myself, Lisa Stein, and Eric Treworgy, who was acting CEO
9 at the time.

10 Q. Did you actually take part in the decision to hire her?

11 A. Yes. It was the three of us who made the decision. Yes, I
12 did.

13 Q. I am not going to ask questions about the Pathway Out of
14 Property. I want as a frame of reference. We're talking about
15 the position that has been previously testified to, the
16 affiliate service coordinator position through the Pathway of
17 Property grant, correct?

18 MR. UNAMSKY: Objection.

19 THE COURT: Correct.

20 A. Can you repeat the question?

21 THE COURT: No. Put another question.

22 MS. KREBS: Yes, your Honor.

23 Q. Plaintiff was hired into the affiliate services coordinator
24 position for the Pathways Out of Property grant?

25 A. Yes.

D8s6joh2

Carmona - direct

1 Q. Now, at the beginning of her employment, who was her
2 supervisor?

3 A. I was to supervise her initially.

4 Q. At some point did that change?

5 A. That had changed very much pretty quickly actually.

6 Q. Why did that change?

7 A. I was on the road a lot with the other affiliates and stuff
8 and also we realized that the person that supervised her had to
9 be steeped in government contracts, particularly labor
10 contracts and alike, and that was Lisa's strong suit.

11 Q. Did you participate in the decision to transfer her
12 supervision from yourself to Ms. Stein?

13 A. Yes, I did.

14 Q. How would you describe your relationship with Ms. Johnson
15 starting from the outset of her employment?

16 A. It was cordial. It was amicable. Actually, it was a good
17 relationship.

18 Q. Could you please describe, if any, personal conversations
19 that you had with Ms. Johnson about her personal life?

20 MR. UNAMSKY: Objection.

21 THE COURT: I am not sure. That is sort of a broad,
22 open-ended question. Do you think you can be more specific?

23 MS. KREBS: I will try, your Honor I am trying to be
24 broad and open-ended.

25 Q. Did you have opportunities at any time to have

D8s6joh2

Carmona - direct

1 conversations with Ms. Johnson about her personal life?

2 A. Yes. And that happened pretty early on and probably lasted
3 for almost her entire time there.

4 Q. At whose initiation were these conversations?

5 A. It was Brandi's.

6 Q. Could you please identify some of the topics that
7 Ms. Johnson came to speak about?

8 A. Sure.

9 MR. UNAMSKY: Objection.

10 THE COURT: Overruled.

11 A. In the first year that she worked with me at STRIVE, she
12 came to me about challenges she was having with one of her
13 kid's fathers crying and wondering and asking me why a man
14 would treat a woman the way she was being treated when she felt
15 she was demonstrating commitment and alike. Ultimately what I
16 said to her was that this gentleman, if my memory serves me
17 correctly, was living life on the left side of the street if
18 you may, a street guy. And I said you have aspirations to be a
19 professional and you cannot live life with your legs planted in
20 both worlds. So it may be in your interest to just walk away
21 from it.

22 Q. Did she share with you any other personal details about
23 herself?

24 A. Yes, she did. She, you know, would relate to me about the
25 challenges that she had with her mother, challenges she had

D8s6joh2

Carmona - direct

1 with maintaining friendships, relationships. Things of that
2 nature.

3 Q. Did she ever come to you for assistance with anything?

4 A. Yeah. Quite a few times. I remember, you know, regretful
5 that I think it was in 2011 we were at a conference that we had
6 for the national network up in White Plains and she came to me
7 speaking about her troubles and her depressions and stuff and I
8 had asked her if she had ever been to therapy and she told me
9 no and I suggested that she attend therapy and provided her
10 with the name of a friend of mine that has a therapy friend
11 down on Madison Avenue.

12 Q. Did you ever have any follow-up conversations with her
13 about that?

14 A. Yes, I did. I didn't do it specifically with her about the
15 content of what she would discuss with John as a professional,
16 but I asked her how it was going and she told me that she
17 stopped after two sessions.

18 Q. Did she give you any reason why?

19 A. She said it was too painful and at that point I said to
20 her, You have to go through the pain. You know, it is not just
21 going to go away. She chose not to do that.

22 Q. Did she ever come to you for any assistance with respect to
23 schooling?

24 MR. UNAMSKY: Objection.

25 THE COURT: Sustained.

D8s6joh2

Carmona - direct

1 Q. Did she ever come to you for any other assistance?

2 MR. UNAMSKY: Objection.

3 THE COURT: Sustained.

4 Q. Did she ever make any personal requests of you?

5 THE COURT: Sustained.

6 MR. UNAMSKY: Objection.

7 Q. Mr. Carmona, do you ever use profanity in the STRIVE
8 workplace?

9 A. Yes, I do.

10 Q. Could you describe the way you use profanity?

11 A. It could be, now, I am having a conversation with one of my
12 colleagues -- Phil, Lisa, Brandi, whoever -- and I might say
13 something like -- if we're meeting and it it is about
14 statistics, I might to say something like, We got is to get
15 this shit together. That kind of thing.

16 Q. In that same type of context have you ever used the word
17 fuck?

18 A. Yes.

19 Q. When you have used profanity in sentences, what were the
20 genders of the individuals to whom you were speaking?

21 MR. UNAMSKY: Objection.

22 THE COURT: Overruled.

23 A. Guys, gals, men, women.

24 Q. And when you used profanity in sentences, what were the
25 races of the individuals to whom you were speaking?

D8s6joh2

Carmona - direct

1 A. The race?

2 Q. Races, yes.

3 A. Black, Latino, white, Asian.

4 Q. Mr. Carmona, have you ever referred to yourself as a male
5 chauvinist?

6 A. Yes, I have.

7 Q. Would you please describe the basis for that statement and
8 the context in which it was used?

9 A. Certainly. When my mother passed away and did her eulogy.
10 The title of the eulogy was: For the Orphan, the Journey Ends.
11 And we had a women's cohort workshop. It was just women and I
12 always have a part in the orientation of incoming clients. I
13 brought in the eulogy with me and I said to them as a Latino
14 man growing up in the '50s and '60s, our culture had a lot
15 machismo, etc., but that in my head I knew it didn't make sense
16 because I was raised by a woman that defied all of that
17 stereotypical kind of thinking. I had in fact left that eulogy
18 with the women in that classroom so they could refer to it over
19 the four weeks of their training.

20 I think I closed that by saying that in my experience
21 that women demonstrated to me that they are not in fact not
22 only as strong as men but in fact may be stronger as they
23 always been the backbone of the black and Latino community.

24 Q. I would like to turn your attention to an incident
25 involving an individual by the name of @Jamark Cooks?

D8s6joh2

Carmona - direct

1 A. Yes.

2 Q. Do you know this man?

3 A. Yes, I do.

4 Q. Who is he?

5 A. He was a client of STRIVE.

6 Q. Do you recall an incident where you had a conversation with
7 Mr. Cooks?

8 A. Yes, I do.

9 Q. Can you describe immediately preceding the circumstances
10 that led up to your conversation with him?

11 A. I came around to the offices, going around Phil's way. I
12 am on the other side of the office. It is a great big office.
13 @Jamark was sitting at Brandi's desk. She had been spoken
14 about that before. I waited and I didn't say anything and I
15 waited until he went to use the fiscal department to get a
16 Metrocard. One of the things we do when we give a client a job
17 is we give him or her Metrocards to engage them. I went up to
18 him and said, Look, in the future, you know, refrain from
19 coming back here, sitting at her desk. You should not be back
20 here unless you have business with the fiscal department.
21 There is no need to be in that area of the office.

22 Q. What, if any, experiences with Ms. Johnson led you to feel
23 the need to have that conversation with him?

24 MR. UNAMSKY: Objection.

25 THE COURT: Overruled. I think the easier and better

D8s6joh2

Carmona - direct

1 question is: Was it her job that to have the kind of
2 conversation you understood was being had with her and him?

3 THE WITNESS: No. She didn't not have either the
4 skill set nor was it part of her job description to counsel
5 clients and, in fact, she had been told on a number of
6 occasions to refrain from that because the fear was she would
7 open up a can of worms with a client that she wouldn't know how
8 to close because it wasn't her skill set.

9 BY MS. KREBS:

10 Q. Shortly after that discussion with Mr. Cooks, did you have
11 a meeting with Ms. Stein and Mr. Weinberg? I am just asking
12 chronologically.

13 A. That same day that you are asking me?

14 Q. At some point after that.

15 A. Yes. Yes, we did.

16 Q. Where was that meeting?

17 A. In Phil's office.

18 Q. Who was there in the meeting?

19 A. Phil Weinberg, Lisa Stein and myself.

20 Q. Thank you. I was just going to make sure you identify.

21 Was your door open or closed?

22 A. The door was closed.

23 Q. I am sorry. I apologize. I don't know if I asked this
24 question. In whose office was it?

25 A. Phil Weinberg's.

D8s6joh2

Carmona - direct

1 Oh, no. Lisa's office. I am sorry. It was Lisa's
2 office.

3 Q. At some point was there a knock at the door?

4 A. Yes, there was.

5 Q. What happened then?

6 A. There was a knock at the door. I think Phil said, Yes, or
7 something like that. The door opened.

8 (Continued on next page)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 A. D8snjoh3 Carmona - direct

2 Q. Who was at the door?

3 A. Brandi Johnson. And she said, I have to speak to you
4 right, right now. There was something take place, and I said
5 something to the effect like, No, you don't. We are in a
6 meeting.

7 And she said, I have to speak right now.

8 I said, Excuse me, to close the door.

9 She kept on, and I said, Excuse me.

10 Finally I just closed the door.

11 Q. Where were you physically situated in the office when you
12 closed the door -- when she walked in or opened the door?

13 A. I was sitting by the door. Lisa's office is small, and her
14 desk, if you are sitting in front of Lisa's desk, the guy, the
15 person to her right is right by the door.

16 Q. Where was Ms. Stein? Within the setting of the office,
17 where was she sitting?

18 A. I can't recollect the sitting. I think Lisa might have
19 been behind her desk and Phil was to my right, I think. I
20 don't recall that.

21 Q. What was the level of force that you used to close the
22 door?

23 A. I closed it. You know, I didn't slam it. I closed it,
24 just closed it with my hand.

25 THE COURT: You heard the plaintiff's testimony about

1 that incident? You have to answer because otherwise the
2 reporter can't take it down? The answer is yes?

3 THE WITNESS: Yes.

4 BY MS. KREBS:

5 Q. You can't nod. You need to actually verbalize your
6 response so the court reporter can take it down.

7 A. I'm sorry. OK.

8 Q. Did you have any subsequent conversations with anyone about
9 this brief encounter?

10 A. Yes. I had a conversation with Phil about it.

11 Q. That's Mr. --

12 A. Phil Weinberg.

13 Q. And could you please describe the substance of that
14 conversation?

15 A. He admonished me that that was inappropriate, and I agreed.

16 Q. That what was inappropriate?

17 A. Closing the door like that when she was trying to walk in.

18 Q. Do you recall an incident in which Ms. Johnson came to you
19 with respect to a complaint by a graduate?

20 A. Yes, I do.

21 Q. Can you please describe how you came to know of the
22 complaint by the graduate?

23 A. OK. We were getting ready to have a full staff meeting,
24 and, you know, we were all walking into the meeting and I -- if
25 my memory serves me correctly, the meeting was pretty

1 important. Ernie and different people were going to report on
2 some stuff that was going on. As I was getting ready to go in
3 the meeting, Brandi came to me and said she had to talk to me.
4 And I went, We're getting ready to go into a meeting.

5 She said, I have somebody at my desk that has
6 something you ought to hear.

7 And I went and I got Ernie, Ernest Johnson, who is our
8 senior director of support services, and I went to get Ernie.

9 I said, Ernie we have to go see Brandi. She has a
10 client there.

11 Ernie gave me a look and was a bit annoyed with me
12 because he had to make a presentation in our staff meeting, but
13 I said, She asked me, I think it was important.

14 So we went back to the desk and there was a young lady
15 sitting there with Brandi at the desk. And Ernie asked her,
16 you know, What happened?

17 And Brandi began to explain that the young lady felt
18 that she was sexually -- I don't know what the word is, touched
19 or whatever by a staff member.

20 Q. Did she identify the name of the staff member?

21 A. Yes, she did.

22 Q. Which staff member was that?

23 A. It was a trainer named Angel Garito.

24 Q. OK. Did the young lady describe the specifics of her
25 encounter with Mr. Garito?

1 A. Yes, she did. Ernie asked her what, in fact, Mr. Garito
2 did, and she said that he touched her on the arm and said, I
3 think it was, Maybe when you get a job you can take me to
4 lunch.

5 And then Ernie asked the young lady how long ago this
6 happened and the lady said a year and a half ago.

7 So Ernie looked at Brandi and said, Write it up, have
8 her write it up and set up an appointment for her to see me.

9 THE COURT: This was the sort of counseling you were
10 talking about before for which she in your view had no skill
11 sets, right?

12 THE WITNESS: Exactly.

13 THE COURT: You don't know how it came about a second
14 time that she was in a similar position?

15 THE WITNESS: No. I don't know what the girl was --
16 but, yeah, she would keep doing that.

17 THE COURT: When you were saying you were going into a
18 staff meeting, and it was a big staff meeting --

19 THE WITNESS: Yes.

20 THE COURT: -- and an important staff meeting, how
21 many people are on your staff or were at that time?

22 THE WITNESS: Probably around 30.

23 THE COURT: Thanks.

24 BY MS. KREBS:

25 Q. Of those 30 individuals, was everybody in the office

1 attending that meeting?

2 A. Everybody with the exception of the phone person that has
3 to answer the phones and Brandi.

4 Q. Was Ms. Johnson originally scheduled to attend the meeting?

5 A. Oh, yeah, everybody was.

6 Q. After Mr. Johnson said to the young lady to write up the
7 complaint and provide it to him, what did Mr. Johnson do?

8 A. We both went back to the staff meeting because he had to
9 make a presentation.

10 Q. The two of you then at the same time go back together?

11 A. We went back together, yes.

12 Q. Was there any other communication after he said that she
13 could write a complaint?

14 A. No.

15 Q. Did you have any follow-up communications with Ms. Johnson
16 about this encounter?

17 A. No, I didn't.

18 Q. Did you ever tell her that the participant was ugly as
19 shit?

20 A. No, I didn't.

21 Q. Did you ever say any other derogatory comments about the
22 participant?

23 A. No, I didn't.

24 Q. Now, you were in this courtroom the other day when opposing
25 counsel played a tape of a communication between you and

1 Ms. Johnson in which you used the word nigger?

2 A. Yes.

3 Q. The first thing I would like to ask you is, was there an
4 incident or a communication or an encounter prior to that that
5 led up to that discussion?

6 A. Yes. There was a prior situation, yeah.

7 Q. Could you please describe the prior exchange, the prior
8 one?

9 A. OK.

10 Q. Yes.

11 A. At STRIVE we have a lunch club, it's about four main
12 characters to it and people float in and out of the meeting.
13 So we were in the lunch -- where we have our lunch and also
14 present was this girl named Leticia that worked for CWE, and
15 she was dressed --

16 Q. I don't mean to interrupt. I just want to specify. I
17 think there had been potentially more than one Leticia
18 mentioned. Was there also a different Leticia that worked for
19 STRIVE?

20 A. There is a Leticia that works for STRIVE as director of
21 training?

22 Q. So, this particular Leticia, could you just say her last
23 name so the record is clear. The other Leticia from CWE, was
24 that Leticia Thomas.

25 A. Yes.

1 Q. I apologize for interrupting. I just didn't want there to
2 be confusion. Could you continue?

3 A. We're in there having lunch, and Leticia was dressed like
4 she was going to a club or something. And I said, Hey, Tish,
5 are you going to a club? Or something like that.

6 And she laughed and said, These aren't my club
7 clothes. You should see what I dress like when I really go to
8 clubs.

9 And I said to her: You're like Brandi. You guys,
10 you're so smart, you but act like a nigger sometimes.

11 Q. Now, did you use the word nigger during that conversation
12 with Ms. Thomas?

13 A. I'm not sure if I said that or said ghetto. I said one or
14 the other. I couldn't really recall, because it was all a goof
15 quite frankly.

16 Q. During this exchange did anybody express any offense?

17 A. No. We were all laughing, including Leticia.

18 Q. Now, after that exchange Ms. Johnson at some point
19 thereafter came to your office?

20 A. Yes, she did.

21 Q. Then I'm not going to go through the discussion because we
22 have all heard it on the tape and we don't need you to explain
23 it or to describe it, but I did want to ask you a couple of
24 questions about it.

25 When you used the word nigger in that conversation

1 with Ms. Johnson, what was the meaning you were intending for
2 it?

3 A. Too emotional, wrapped up in her, at least the negative
4 aspects of human nature, if you may, and as a barrier for her
5 to move forward professionally the way she indicated to me over
6 time that she wanted to move forward.

7 Q. What was your intent in using the word nigger in the
8 context of the overall conversation?

9 A. I was trying to get the message across to Brandi that she
10 has the potential to go as far as she wants, but she holds
11 herself back. And this was really a culmination of a number of
12 discussions with Brandi that were like that.

13 Q. Now, had Ms. Johnson used the word nigger before when
14 speaking with you?

15 A. Frequently.

16 Q. Including in those personal conversations you described
17 before where she would share information with you?

18 A. Oh, yes, absolutely.

19 Q. Do you recall a conversation with Ms. Lynette Hall,
20 Ms. Cammie Crawford, and Ms. Johnson in which the phrase "wrap
21 it up" or "break it up" was used?

22 A. Yes, I do.

23 Q. I am going to direct your attention to that conversation at
24 this point, OK?

25 A. Uh-huh.

1 Q. Approximately when did this conversation take place?

2 A. It was last year, in 2012. I can't recall the exact time.

3 Q. Can you recall whether it was before or after Ms. Johnson's
4 attorneys sent the allegations to STRIVE's offices?

5 A. It was after.

6 Q. Now, where did this conversation take place?

7 A. They were sitting at Nettie's desk -- I'm sorry Lynette's
8 desk, we call her Nettie -- Lynette's desk. When you come out
9 of my office, the first desk you hit is Cammie, then Nettie's
10 desk. They were sitting at Nettie's desk eating, laughing,
11 joking kind of loud.

12 Q. Approximately how far from your office is Ms. Hall's desk?

13 A. Maybe to this gentleman right here.

14 Q. You are referring to the first juror?

15 A. The first gentleman with the striped shirt, yes.

16 Q. Let the record reflect that is approximately --

17 A. Eight feet maybe?

18 MR. UMANSKY: Objection.

19 THE COURT: I think it's probably as good for her as
20 for me. Why don't we say eight feet.

21 BY MS. KREBS:

22 Q. Prior to this occasion of them eating lunch at Ms. Hall's
23 desk, had they ever, all three of them, eaten lunch at either
24 Ms. Crawford's or Ms. Hall's desk?

25 A. They did it a lot, about three or four times in that time

1 period around then.

2 Q. About three or four times prior to that?

3 A. Right.

4 Q. Those three or four times, were those all after
5 Ms. Johnson's attorneys had filed the allegations with STRIVE?

6 A. Yes, they were.

7 Q. What was their demeanor while they were at the desk?

8 A. They were just laughing, joking, eating food, carrying on,
9 talking and stuff.

10 Q. What was the volume?

11 A. It was high, because it's like right outside, my -- yeah,
12 it was high.

13 Q. Where were you?

14 A. In my office.

15 Q. How, if at all, did this affect your work environment?

16 A. The first few times they did it, it made me uncomfortable
17 because I began to feel that Brandi was going to them being
18 loud out side my office to try to provoke me.

19 So the fourth time or so I told them to break it up.
20 The other thing was that we had a policy I think that we had a
21 vermin problem. We said not to eat at our desks.

22 Q. After you went out to them and told them to break it up or
23 wrap it up, did you say anything else to them at that moment in
24 time?

25 A. Not at that moment, no.

1 Q. What, if anything, did they do in response to your
2 statement?

3 A. They broke it up.

4 Q. Did you have any follow-up conversations with Ms. Crawford
5 and Ms. Hall?

6 A. Yeah, about I guess ten minutes after that they came into
7 my office and I said to them that they were doing well at the
8 organization, I had seen a lot professional development from
9 them over the years, and that they should not allow themselves,
10 to be careful to not allow yourself to be used.

11 Q. Did you mention Ms. Johnson by name when you made the
12 statement to them?

13 A. I did not.

14 Q. Did you mention the document that her lawyers had sent or
15 any of the allegations in that document?

16 A. I did not.

17 Q. Did they ask you what you meant by that?

18 A. No.

19 Q. Did anything further occur in the conversation other than
20 what you have already described?

21 A. No. Then they left.

22 Q. Did you have additional or follow-up conversations with
23 them of this nature?

24 A. No.

25 Q. After these conversations, did you ever see those three

1 ladies having lunch together at either Ms. Crawford's or
2 Ms. Hall's desks?

3 A. No.

4 Q. Did you ever see them having lunch, all three of them
5 together, elsewhere?

6 A. Yeah. In the conference room where people have lunch.

7 Q. And at any point in time when you saw them having lunch
8 together, again, did you ever tell them to wrap it up or break
9 it up?

10 A. No.

11 Q. You were present in the courtroom when there was testimony
12 alleging that you at one point in time said, Put this bitch in
13 a smash.

14 Do you recall that testimony?

15 A. Yes, I do.

16 Q. Did you ever say that about Ms. Johnson?

17 A. No, I did not. And it's not a statement I would make.
18 That's more the kind of language a younger generation uses.

19 Q. Did you have any conversations with Mr. Weinberg or
20 Ms. Stein around Ms. Johnson's termination in the last several
21 months of her employment?

22 A. I missed the last part.

23 Q. I'm sorry. Let me rephrase.

24 During the last few months of Ms. Johnson's
25 employment, did you have any conversations with Mr. Weinberg or

1 Ms. Stein about Ms. Johnson's termination?

2 A. Yes, we did. One particular time Lisa had had, you know, a
3 number of documentations of not-cool behavior on the part of
4 Brandi, and we were talking about her potential termination.

5 Now, Phil Weinberg had not been on board for that long
6 a period at the time, so he didn't really have the data points
7 about Brandi that Lisa and I may have had. And I advocated for
8 us to give her another shot and not terminate her and see if
9 she would work through this.

10 Q. Do you recall approximately when that was?

11 A. I would have to say it had to have been between late 2012
12 and early 2013 -- late '11 and early 2012.

13 Q. After the complaint from Ms. Johnson's attorneys came into
14 the STRIVE offices, did you ever have any conversations about
15 Ms. Johnson's termination?

16 A. No.

17 MS. KREBS: May I just have a moment, your Honor.

18 THE COURT: You may.

19 BY MS. KREBS:

20 Q. Mr. Carmona, have you ever been referred to as a nigger?

21 A. Yeah.

22 Q. In what context?

23 A. Oh, probably about three or four different contexts. You
24 know, in the African-American and similarly in the Latino
25 community, that word has multiple contexts. It could be a

1 feeling indicating love; it could be indicating anger. It
2 could be indicating love for a person or indicating anger,
3 depending on the context of the conversation.

4 Q. Could you explain a bit more about the usage or the
5 presence, placement of the word nigger in that community?

6 MR. UMANSKY: Objection.

7 THE COURT: I don't know. He probably has some
8 experiences. He's hardly a sociologist. But I will let you
9 give us your view from your experience.

10 THE WITNESS: OK.

11 A. If I am walking down, the street with Kuuku and we bump
12 into Phil, and Phil is somebody I grew up with and knew 25
13 years ago and he's African-American, in this context, I might
14 put my arm around Phil and say, to Kuuku, This is my nigger for
15 30 years. That means my boy, I love him, or whatever.

16 Conversely, I could be walking down the street with
17 Kuuku and see Phil, and Phil -- I don't know -- beat me up when
18 we were 12 years old or something, I would say to Kuuku, That
19 nigger over there beat me up when we were kids. In that case
20 it was a different connotation.

21 Q. Now, are there other intermediary connotations as well?

22 A. A bunch. It could be substituted for the word dude, like
23 you said, Hey, dude, or something like that. It could be
24 substituted for it. It has about five different connotations
25 really.

1 Q. Did Ms. Johnson ever tell you she thought that you had any
2 sort of animus against her because she was black?

3 A. No.

4 Q. Did she ever say that she thought you had any sort of
5 animus against her because she was a woman?

6 A. No.

7 Q. Did you have any sort of animus against her because she was
8 black?

9 A. No.

10 Q. Did you have any negative feelings towards her because she
11 was a woman?

12 A. No.

13 Q. Were you ever referred to as a nigger when you were at Day
14 Top Village?

15 A. Oh, yeah, absolutely.

16 THE COURT: Sustained.

17 MR. UMANSKY: Your Honor, move to strike.

18 THE COURT: Stricken.

19 MS. KREBS: I have nothing further, your Honor.

20 Thank you, very much, Mr. Carmona.

21 THE COURT: Any cross?

22 MR. UMANSKY: Yes, your Honor.

23 CROSS EXAMINATION

24 BY MR. UMANSKY:

25 Q. Good afternoon, Mr. Carmona.

D8snjoh3

Carmona - cross

1 A. Good afternoon, sir.

2 Q. Good morning. We have never met before, correct?

3 A. No.

4 Q. We have never spoken before, correct?

5 A. No.

6 Q. You have previously given testimony in this case at a
7 deposition on June 4, 2013, correct?

8 A. I gave -- I don't remember the date, but, yes, I guess so.

9 Q. You told the truth during the deposition, correct?

10 A. Yes.

11 Q. Then you reviewed this deposition for its accuracy and
12 honesty, correct?

13 A. Yes, I did.

14 Q. On direct examination when counsel asked you if you were
15 married, you said you married, correct?

16 A. Yes.

17 Q. When did you become married?

18 A. I got together with my wife in '78. We lived together for
19 two years and we married in '90. But I counted two years off
20 the front. So we have been together since 1978.

21 Q. Isn't it true that you actually separated from your wife?

22 A. At the moment --

23 MS. KREBS: Objection, your Honor. Relevance.

24 THE COURT: Sustained.

25 MS. KREBS: Move to strike the beginning of the

D8snjoh3

Carmona - cross

1 response.

2 BY MR. UMANSKY:

3 Q. Mr. Carmona, during your deposition on June 4, 2013, were
4 you asked the following questions and did you give the
5 following answer.

6 MS. KREBS: Objection, your Honor.

7 THE COURT: You are going to tell us where it is,
8 right?

9 MR. UMANSKY: Page 12, line 23. Would you like a
10 chance to pull out your deposition testimony?

11 THE COURT: I would like a chance to pull out his
12 deposition testimony.

13 THE WITNESS: I don't know what I am looking at.

14 THE COURT: Neither do I.

15 MR. UMANSKY: Exhibit 3.

16 A. Exhibit 3, volume 3 of 3 or volume 2 of 3?

17 Q. It would be volume 1 of 3.

18 A. That is not up here.

19 MS. KREBS: Objection, your Honor. He's laid no
20 foundation to provide deposition testimony at this point in
21 time.

22 THE COURT: I don't know what you mean by -- I'm glad
23 to have him look at his deposition testimony and ask questions
24 about it.

25 THE WITNESS: There's another thing up here. I don't

D8snjoh3

Carmona - cross

1 know if this is -- OK.

2 THE COURT: When you were deposed, I presume you were
3 under oath, is that correct?

4 THE WITNESS: Yes. So what am I looking at?

5 BY MR. UMANSKY:

6 Q. Mr. Carmona, please turn to page 12 in your deposition.

7 A. OK.

8 MS. KREBS: Objection, your Honor. Relevance, lack of
9 foundation.

10 MR. UMANSKY: Your Honor, I didn't ask the question.

11 MS. KREBS: Your Honor just sustained the objection.
12 You identified what page it is on. I can see the deposition
13 testimony myself.

14 MR. UMANSKY: Your Honor, can we move on?

15 THE COURT: I thought I would look at it, too, since
16 there is an objection.

17 What lines on page 12 are you anxious to read?

18 MR. UMANSKY: Page 12, line 24.

19 THE WITNESS: How many times --

20 THE COURT: Please, don't you read it.

21 THE WITNESS: I'm sorry.

22 THE COURT: I'm asking a question to see whether or
23 not we should read it, whether or not it is relevant. I have
24 ruled now that it is not, so you need not answer that question
25 at all. And he's going to move right along.

D8snjoh3

Carmona - cross

1 THE WITNESS: Thank you.

2 MR. UMANSKY: Thank you, your Honor.

3 BY MR. UMANSKY:

4 Q. Mr. Carmona, when Mr. Eric Treworgy was acting CEO for
5 STRIVE you sat on STRIVE's board of directors, isn't that true?

6 A. Yes.

7 Q. Mr. Treworgy left STRIVE in early 2011, correct?

8 MS. KREBS: Objection. Outside the scope of direct.

9 THE COURT: I will allow it.

10 BY MR. UMANSKY:

11 Q. You may answer.

12 A. I'm sorry. Could you repeat the question.

13 Q. Mr. Treworgy left STRIVE in early 2011, correct?

14 A. Yes I believe so.

15 Q. In November 2011, Mr. Philip Weinberg was brought in as the
16 CEO of STRIVE, correct?

17 A. Correct.

18 Q. Now, when Mr. Weinberg came on as CEO in November 2011, you
19 relinquished the same duties and responsibilities that you had
20 relinquished to Mr. Treworgy before, correct?

21 A. Correct.

22 Q. In fact, the reason Mr. Weinberg was brought in as the CEO
23 was because he was white, correct?

24 A. No.

25 Q. No? I would like you to turn to page 42 of your

D8snjoh3

Carmona - cross

1 deposition.

2 A. Page what?

3 Q. 42.

4 A. OK.

5 Q. Mr. Carmona --

6 MS. KREBS: I'm sorry, your Honor. I would first like
7 to know what lines he's going to be reading so I can identify
8 whether I think there needs to be more read into the record
9 pursuant to your Honor's prior instructions that we should do
10 this all at once.

11 THE COURT: Yes.

12 I think we are always supposed to tell the line.
13 Otherwise how do you expect us to find it before you start to
14 read it?

15 MR. UMANSKY: My apologies, your Honor. Line 12, page
16 42.

17 MS. KREBS: Your Honor, I would ask that there be
18 additional portions read into the record if that's going to be
19 allowed to be read into the record.

20 THE COURT: If it creates a better context. I will
21 read it and determine whether that should happen or not.

22 BY MR. UMANSKY:

23 Q. Mr. Carmona --

24 MS. KREBS: I'm sorry, your Honor. Shall I tell you
25 that now or do you want it after he reads this portion?

D8snjoh3

Carmona - cross

1 THE COURT: I think we can wait.

2 MS. KREBS: OK.

3 THE COURT: I can wait. I don't know about you.

4 MS. KREBS: That is fine, your Honor. I just wanted
5 to take your direction.

6 BY MR. UMANSKY:

7 Q. Mr. Carmona.

8 A. Yes.

9 Q. Looking at page 42, line 12 of your deposition, were you
10 asked the following question and did you give the following
11 answer:

12 "Q. So what did Mr. Weinberg bring to the table that you
13 didn't already have?

14 "A. What did he bring to the table that I didn't have?

15 "Q. Yes, sir.

16 "A. He's white."

17 Do you recall being asked those questions and do you
18 recall giving that testimony?

19 A. Yes, I do.

20 THE COURT: Do you want to read something further than
21 that, Ms. Krebs?

22 MS. KREBS: I certainly do, your Honor.

23 MR. UMANSKY: Sure, your Honor.

24 How much do you want me to read?

25 MS. KREBS: I actually would like to begin with page

D8snjoh3

Carmona - cross

1 41.

2 MR. UMANSKY: Your Honor, she is not conducting the
3 cross here.

4 THE COURT: She is telling you what she would like. I
5 have not yet ruled on it. So don't fear anything yet.

6 MS. KREBS: I would like it to be read starting on
7 page 41, line 23, through 43, line 7, and then page 45.

8 THE COURT: Wait a minute. We are on 43 -- you are
9 talking about 41, and now you are on 43 and he read 42.

10 MS. KREBS: I would like there to be part of it right
11 before and part of it right after of what he read.

12 THE COURT: You can read line 23 on page 41 and
13 through the end of that answer, which I guess is 11.

14 MS. KREBS: Then, your Honor, additionally, there is
15 further testimony on that page 42, line 21, to page 43, line 7,
16 and then again page 45.

17 MR. UMANSKY: Your Honor maybe counsel wants me to
18 read the entire deposition.

19 MS. KREBS: I wouldn't mind reading the several pages
20 if that's what it takes to put the entire answer in context,
21 but I'm trying to be more limited, your Honor.

22 In addition, page 45, line 10, through page 46, line
23 18.

24 MR. UMANSKY: Your Honor, defendant has an opportunity
25 to redirect.

D8snjoh3

Carmona - cross

1 THE COURT: The object -- I thought I made this clear
2 yesterday. It is obviously true that she could do it on
3 redirect. The way I think the jury gets a better picture is if
4 we do it in context.

5 So I'm prepared to let you read what she thinks is
6 appropriate on pages 42 and 43 and that's it.

7 MR. UMANSKY: Thank you, Your Honor.

8 MS. KREBS: I'm sorry, your Honor.

9 THE COURT: I told you what I thought.

10 MS. KREBS: Yes, your Honor.

11 MR. UMANSKY: Page 41, line 23:

12 "Q. How is it that Mr. Weinberg then came to be chosen as CEO?

13 "A. Because he has the skills. He has the, you know, I'm
14 befuddled by your question, I've already articulated that I
15 have been in the business for 32 years. I have all these
16 relationships, time on tasks, experience, etc. Phil's a young
17 man that we recruited for the agency, right, to take into the
18 future. There's no way at 39 years of age he has the same
19 relationships and time on task as somebody who is 62.

20 "Q. So what did Mr. Weinberg bring to the table that you
21 didn't already have?

22 "A. What did he bring to the table that I didn't have?

23 "Q. Yes, sir.

24 "A. He's white.

25 "Q. And what does his whiteness have anything to do with what

D8snjoh3

Carmona - cross

1 he brought to the table?

2 "A. Probably nothing, you know. I'm not sure, to be quite
3 blunt, what your question is.

4 "Q. If you don't my question, you can always answer.

5 "A. I understand what you are trying to ask. I guess what I'm
6 throwing back at you is that your question makes no sense.

7 "Q. What is it about my question that doesn't make any sense?

8 "A. When you ask me something like what does Phil bring to the
9 table that I didn't have, that, that I didn't step out of the
10 role because I lacked in any responsible nonprofit, right,
11 after a number of years particularly the founder seeks to make
12 a transition."

13 MR. UMANSKY: Do you want me to read from the other
14 page?

15 THE COURT: Sure.

16 "Q. Is it your belief that that's what my question was
17 implying, because that's not what I was asking?

18 "A. Your question clearly implied, right, why did he get the
19 job if he didn't have as much relationships and stature that I
20 may have brought to the table, which is quite frankly, you
21 know, silly. He's a young -- he's a young man, and I'm an old
22 dog in the business, right. I have all these relationships
23 with nonprofits I started for a cofounder and what have you.

24 "Phil's a young guy at the beginning of his career,
25 right, and being able to manage the organization, supervise

D8snjoh3

Carmona - cross

1 staff and all of that is a very separate item that now he has
2 relationships and etc."

3 THE COURT: Let's go ahead.

4 BY MR. UMANSKY:

5 Q. Mr. Carmona, on direct examination you testified that you
6 are the founder of STRIVE, correct?

7 A. Cofounder.

8 Q. Thank you.

9 You first became familiar with the plaintiff,
10 Ms. Brandi Johnson, when she applied for a job with STRIVE in
11 2010, correct?

12 A. Yes.

13 Q. Ms. Johnson was hired for that affiliate service
14 coordinator position, correct?

15 A. Yes.

16 Q. Isn't it true that the position Ms. Johnson was hired for,
17 the affiliate service coordinator position, had existed before
18 she came on board?

19 A. Yes.

20 Q. Mr. Carmona, on direct there was some question and you gave
21 testimony about being a male chauvinist.

22 Do you recall that?

23 A. Yes.

24 Q. You were talking about a eulogy for your mother, correct?

25 A. Yes.

D8snjoh3

Carmona - cross

1 Q. I would like to direct your attention to page 241 of your
2 deposition.

3 A. Got it.

4 Q. Before we ask questions from the deposition, I have a
5 question.

6 You referred to yourself as a male chauvinist because
7 you are a Puerto Rican male, that your word is the law, that
8 women are emotional and you're not, isn't that true?

9 A. Not quite.

10 Q. No. All right.

11 Referring to page 241 of your deposition testimony,
12 line 12.

13 A. Yes.

14 Q. Were you asked the following question and did give the
15 following answer.

16 MS. KREBS: I'm sorry, your Honor. Could I please
17 know what the full length is so I know if I need to add
18 anything thereafter.

19 THE COURT: You mean how far he's going to read?

20 MS. KREBS: Yes, your Honor.

21 MR. UMANSKY: From line 12 to line 25.

22 THE COURT: All right.

23 MS. KREBS: Then, your Honor, I would also ask that he
24 continue through on to page 242 through line 19.

25 THE COURT: I will look at it and we will see whether

D8snjoh3

Carmona - cross

1 that is appropriate. Go right ahead.

2 MR. UMANSKY:

3 "Q. So the question that I have for you is what
4 characteristics that you believe are characteristics of a male
5 chauvinist that you also agree that you have, and it's limited
6 to just that.

7 "A. I don't want to agree that I have it. I have a tendency
8 to feel that, and then I go to my head and say that makes no
9 sense, but, like, you know, being I am a Puerto Rican male, the
10 man who rules in his house, whatever rule means, my word is
11 law. You are too emotional and I'm not. You know, these
12 characteristics that I know in my head are not necessarily
13 correct."

14 Were you asked that question and did you give that
15 answer?

16 A. Yes.

17 Q. And you were being truthful when you gave that answer,
18 correct?

19 A. Yes.

20 THE COURT: You can read the next 19 lines I guess.

21 Q. Turning to page 242:

22 "Secondly, and this is something that everybody knows,
23 including Brandi, you know. I was raised by a single mother.
24 My mother is not -- was an orphan. She raised four of us. I'm
25 the next for the last in that food chain. She was on her own

D8snjoh3

Carmona - cross

1 since was two and came here to this country when she was 16. I
2 grew up seeing a woman go from being left by my father, to
3 going on welfare and becoming a bedpan lady in the hospital, to
4 becoming an LPN, to becoming an RN. And it was clear to me
5 that women were every bit as strong as guys, and so I treated
6 them in a lot of respects in that way.

7 "And it's kind of contradictory because I know that I
8 would say, you know, I'm a chauvinist. But the other part of
9 me knows that women are just as strong as men and my mother
10 exemplified that for me."

11 MS. KREBS: Thank you, your Honor.

12 BY MR. UMANSKY:

13 Q. Mr. Carmona, you regarded yourself as a male chauvinist for
14 20-something years, correct?

15 A. No.

16 Q. Directing your attention to page 73 of your deposition
17 testimony.

18 A. 73.

19 Q. Line 16?

20 A. 73?

21 Q. 73.

22 A. Line 16. OK.

23 Q. Were you asked the following question and did you give the
24 following answer:

25 "Q. The instance in which you recall might have saying that

D8snjoh3

Carmona - cross

1 about yourself, do you recall saying that you agreed with that
2 classification?

3 "A. I have been saying that about myself for 20-something
4 years, so that's not new."

5 did you give that answer?

6 A. Yes, I did.

7 Q. Now, isn't it true that almost immediately after
8 Ms. Johnson began her employment with STRIVE you treated her
9 like a male chauvinist?

10 A. No.

11 Q. You told Ms. Johnson that, "You're the type of woman to
12 throw someone under the bus." Correct?

13 A. No.

14 Q. You also told Ms. Johnson to stop walking around with her
15 fucking head down and to do her fucking job, isn't that true?

16 A. No.

17 Q. Please turn to your deposition testimony page 71, line 8.

18 A. OK.

19 MS. KREBS: Could I just have the lines first, please.

20 MR. UMANSKY: Line 8.

21 MS. KREBS: Through?

22 MR. UMANSKY: 12.

23 BY MR. UMANSKY:

24 "Q. Do you recall having a conversation with Ms. Johnson in or
25 around 2010 in which you told her to stop walking around with

D8snjoh3

Carmona - cross

1 her fucking head down and to do her fucking job?

2 "A. Not specifically."

3 Did you give that answer?

4 A. Yes, I did.

5 Q. Were you asked that question?

6 A. Yes, I did.

7 Q. What did you mean by "not specifically"?

8 A. Because I couldn't recall the specificity of this.

9 THE COURT: The four-letter words, do you remember
10 them?

11 THE WITNESS: I use them a lot, your Honor, no.

12 Q. Mr. Carmona --

13 A. Yes.

14 Q. -- isn't it also true that you told Ms. Johnson that black
15 women get in the way of themselves, correct?

16 A. I may have.

17 Q. You may have or you did?

18 A. I may have.

19 Q. Page 134 of your deposition.

20 MS. KREBS: What lines, please?

21 MR. UMANSKY: Line 10 through 14.

22 THE COURT: 134?

23 THE WITNESS: 134?

24 MR. UMANSKY: Yes.

25 MS. KREBS: Your Honor, I don't see how this is

D8snjoh3

Carmona - cross

1 impeachment to the response he just gave.

2 THE COURT: What line?

3 MR. UMANSKY: Lines 10 through 14.

4 "Q. Do you recall --

5 MS. KREBS: I'm sorry, your Honor.

6 I would just ask for a ruling first I don't see how
7 this is impeachment. I don't see how this is in way
8 contradictory to what he just said.

9 THE COURT: This is the fourth time I said this. I
10 think I am going to make it just as clear as I possibly can.
11 So long as there's anything that's close to impeachment, it's
12 an issue for the jury to make that decision. Indeed, I think
13 you gave me a charge that says that.

14 Go ahead.

15 MR. UMANSKY: Thank you, your Honor.

16 THE COURT: When I say charge, the lawyers submit
17 requests to charge on the law. So that when this testimony is
18 over, we have a charging conference and we go over their
19 charges or their requests and put together what it is that in
20 the last analysis we are going to tell you is the law,
21 hopefully correctly.

22 MR. UMANSKY:

23 "Q. Do you recall making any comments to Ms. Johnson that
24 black women get in the way of themselves or any variation
25 thereof?

D8snjoh3

Carmona - cross

1 "A. That's possible. But they can get in the way of
2 themselves. They can."

3 Q. Do you recall being asked that question and did you give
4 that answer?

5 A. Yes, I did.

6 Q. You were being honest when you gave that answer, correct?

7 A. Yes, I did, yes.

8 Q. In 2011 during an audit conducted by the Department of
9 Labor, you had a meeting with Mr. Dwayne Hubbard in your
10 office, correct?

11 A. Yes.

12 Q. And during that time Ms. Johnson walked over and closed
13 your office door, isn't that true?

14 A. She may have. I don't recollect it.

15 Q. After your meeting with Mr. Hubbard, you called Ms. Johnson
16 into your office and yelled at her, "If I wanted my fucking
17 door closed, then I would have fucking closed it myself."

18 Isn't that true?

19 A. No.

20 Q. You were so loud that Ms. Lisa Stein heard the yelling,
21 true?

22 A. She heard --

23 MS. KREBS: Objection, speculation.

24 THE COURT: Sustained.

25 Q. Isn't it true that Ms. Lisa Stein came into your office

D8snjoh3

Carmona - cross

1 after you yelled at Ms. Johnson?

2 MS. KREBS: Objection. Foundation.

3 THE COURT: Overruled. If she came in, she came it.
4 Whether she heard anything before she came in, I have no idea.
5 A. She may have.

6 MS. KREBS: I'm sorry, your Honor. I apologize. I
7 was directing it to the foundation on the first half, not the
8 second half.

9 THE COURT: Overruled. He can answer the question if
10 he can.

11 A. The question again?

12 Q. Ms. Stein actually came into your office after you yelled
13 at Ms. Johnson, correct?

14 A. She may have.

15 Q. Ms. Johnson actually complained to Ms. Stein about this
16 incident, isn't that true?

17 MS. KREBS: Objection. Speculation. Lack of
18 foundation.

19 MR. UMANSKY: Your Honor, the speaking objections,
20 I'll object to that.

21 THE COURT: Sustained.

22 BY MR. UMANSKY:

23 Q. In fact, Ms. Stein informed you that Ms. Johnson was upset
24 when you yelled at her, "If I wanted my fucking door closed,
25 then I would have fucking closed it myself," correct?

D8snjoh3

Carmona - cross

1 A. I don't recall that.

2 Q. But Ms. Stein couldn't admonish you for your behavior,
3 could she?

4 A. I'm sorry.

5 Q. Ms. Stein could not admonish you for your behavior, could
6 she?

7 MS. KREBS: Objection.

8 THE COURT: I don't know what that means. But I will
9 sustain the objection.

10 Q. Ms. Stein couldn't admonish you because you were her boss,
11 isn't that true?

12 MS. KREBS: Objection.

13 THE COURT: Overruled. Is that your view?

14 A. Was that true you said? No, it's not.

15 Q. It's not?

16 A. Uh-uh.

17 Q. Please turn to page 101 of your deposition, line 6.

18 A. OK.

19 Q. Ready.

20 A. Uh-huh.

21 Q. "Q Do you recall ever having a conversation with, with
22 Ms. Stein in which she ever admonished you about the way you
23 spoke to Ms. Johnson?

24 "A. No, I don't recall. And further she couldn't admonish
25 she. I was her boss."

D8snjoh3

Carmona - cross

1 Do you recall being asked that question and gave that
2 answer.

3 A. Sure, I do.

4 Q. Now you're saying no?

5 A. Yes.

6 Q. Yet at that time Ms. Stein was the head of human resources,
7 correct?

8 A. Yes.

9 Q. And she couldn't admonish you, you were her boss, isn't
10 that true?

11 MS. KREBS: Objection. Asked and answered.

12 THE COURT: Sustained.

13 BY MR. UMANSKY:

14 Q. Now, in March of 2012 you were having lunch with several
15 colleagues when Leticia Thomas came into the office, is that
16 true?

17 A. Yes.

18 Q. At that time you said to Ms. Thomas, You are just like
19 Brandi, you are smart as all, but you act like niggers, and
20 then you all laughed, correct?

21 A. Yes.

22 Q. Ms. Johnson wasn't there when you laughed at that
23 conversation, correct?

24 A. No.

25 Q. Ms. Johnson wasn't there when you told Leticia Thompson

D8snjoh3

Carmona - cross

1 that you're smart as all, but you act like niggers?

2 MS. KREBS: I'm sorry. Leticia Thomas. You said
3 Thompson.

4 MR. UMANSKY: Sorry, Leticia Thomas.

5 Q. Ms. Johnson wasn't present when you told Leticia Thomas,
6 You're just like Brandi, you're smart as all, but you act like
7 niggers, correct?

8 A. No, she wasn't there.

9 THE COURT: How much more of this do you suppose we
10 have?

11 MR. UMANSKY: I would say probably another 20 to 30
12 minutes.

13 THE COURT: OK. We will go a little while. We are
14 going to break at 12:30 or 12:40, something like that. But you
15 have time.

16 MR. UMANSKY: Thank you, your Honor.

17 BY MR. UMANSKY:

18 Q. You then walked by Ms. Johnson and in front of her
19 colleagues screamed in sum and substance, You and Leticia are
20 just alike, isn't that true?

21 A. Repeat that.

22 Q. After you told Leticia Thomas that you and Brandi are just
23 alike, you're like niggers, and then you laughed about it,
24 later on you walked by Ms. Johnson and in front of her
25 colleagues you told her you and Leticia are just alike, isn't

D8snjoh3

Carmona - cross

1 that true?

2 A. I don't recall that, no.

3 Q. Isn't that why Ms. Johnson came to your office the next day
4 to discuss this incident?

5 A. No.

6 Q. Isn't it true that Ms. Johnson specifically asked you about
7 what you meant when you said Leticia Thomas and her were just
8 alike?

9 A. Yes.

10 Q. And Ms. Johnson recorded that conversation, correct?

11 A. Yes, she did.

12 Q. Do you remember how you responded?

13 A. Yes.

14 Q. How did you respond?

15 A. To what specifically, sir?

16 Q. When Ms. Johnson asked you what did you mean by her and
17 Leticia Thomas being alike?

18 A. I think I said something like both of you are smart as shit
19 but you're dumb as shit I said. You guys could rise to the top
20 if you got ahold of yourselves, something to that effect.

21 Q. Isn't it true you also said, You know what it is, both of
22 you are niggers, you act like niggers all the time, correct?

23 A. Yes.

24 Q. Didn't you also say, You and her act like niggers, and
25 niggers let their feelings rule them. I'm going to give it to

D8snjoh3

Carmona - cross

1 you hard core. You and her are the same. You and her are very
2 bright, but you all act like niggers, seriously.

3 Did you say that?

4 MS. KREBS: Your Honor, don't we have this on tape.

5 Objection.

6 THE COURT: Overruled.

7 A. What is that?

8 Q. Didn't you also say, You and her act like niggers, and
9 niggers let their feelings rule them. I'm going give it to you
10 hard core you and her are the same?

11 A. Something like that, yeah.

12 Q. Now, defense counsel asked you on direct about the
13 different connotations you interpret for the word nigger,
14 correct?

15 A. Yes.

16 Q. And one of the connotations you said that it indicates
17 love?

18 A. I'm sorry.

19 Q. That it indicates love, correct?

20 A. At times, yeah.

21 Q. In fact, you even gave an example if you were walking --

22 THE COURT: We got it. We just heard it.

23 Q. When you called Ms. Johnson a nigger, did you indicate
24 love? Did you say that out of love?

25 A. Yes, I did.

D8snjoh3

Carmona - cross

1 Q. You did.

2 When you called Ms. Johnson a nigger, you didn't mean
3 that as a term of endearment, did you?

4 A. Not the term nigger, no. But the context of the
5 conversation, when I said to, her you guys could go to the top,
6 I was trying to tell her you could be whatever you want to be,
7 but you hold yourself back. That was the full context, sir.

8 Q. Move to strike as nonresponsive.

9 Please go to page 123 of your deposition.

10 A. Got it.

11 Q. Lines 9 through 12.

12 "Q. When you were speaking to Ms. Johnson about it, were you
13 saying it as a term of endearment?

14 "A. No."

15 Do you recall being asked that question.

16 A. Yes.

17 Q. And giving that answer?

18 A. Yes, I do.

19 Q. When Ms. Johnson disagreed to you calling her a nigger,
20 what did you do? You told her there's nothing to disagree
21 with, Brandi. I'm telling you. Disagree all you want. If you
22 go out there and ask people, they are going to tell you the
23 same thing.

24 Correct?

25 A. Absolutely.

D8snjoh3

Carmona - cross

1 Q. In fact, you stated that everybody that knows Ms. Johnson
2 at STRIVE and at CWE would agree with your colorful assessment
3 that she acts like a nigger, isn't that true?

4 A. Yes, I did.

5 Q. Now, on direct you were asked if Ms. Johnson ever called
6 you a nigger or ever used the N word in general, correct?

7 A. Yes.

8 Q. Do you recall the instances when she used the N word
9 against you?

10 A. I can't recall specific conversations, but she typically
11 used that in everyday conversation, so I don't recollect. It's
12 like asking me if I remember her saying the word the.

13 Q. You can't recall one specific instance when Ms. Johnson
14 called you the N word?

15 A. Called me the N word?

16 Q. Yes.

17 A. No, I can't.

18 Q. You also can't recall one specific instance when
19 Ms. Johnson used the N word in general, correct?

20 A. Yes, I can.

21 Q. You can? Please give it to us.

22 A. When she was speaking about her husband or one of her kids'
23 fathers, you know, she understand why the nigger treats her
24 like that.

25 Q. Please go to page 130 of your deposition.

D8snjoh3

Carmona - cross

1 A. Got it.

2 Q. Line 22.

3 A. All right.

4 MS. KREBS: Sorry. What line?

5 MR. UMANSKY: Through page 131, line 12.

6 "Q. Did Ms. Johnson ever call you a nigger?

7 "A. Yes, she has.

8 "Q. Did she ever tell you that you act like a nigger?

9 "A. Yes.

10 "Q. OK. When?

11 "A. I can't recall specifically when.

12 "Q. Do you recall a surrounding circumstance in which she said
13 it?

14 "A. I can't recall surrounding circumstance.

15 "Q. Do you recall there being any witnesses?

16 "A. I don't know, possibly."

17 Isn't it true you can't recall any circumstance when
18 Ms. Johnson used the N word, correct?

19 MS. KREBS: Objection. Asked and answered.

20 THE COURT: I'll allow it. It's cross.

21 A. Not specifically, sir.

22 Q. Now, Mr. Carmona, on April 26, 2012, do you recall being
23 interviewed by Andy Rahl regarding Ms. Johnson's complaint
24 about you calling her a nigger?

25 A. Yes.

D8snjoh3

Carmona - cross

1 Q. During that interview you told Mr. Rahl that Ms. Johnson
2 did not say she was offended when you called her a nigger,
3 isn't that right?

4 A. Yes. I probably said that.

5 Q. But we know now that that's just not true, correct?

6 MS. KREBS: Objection.

7 THE COURT: Overruled.

8 A. Repeat that.

9 Q. We now know that that's not true she was offended and she
10 you that when you call her a nigger, correct?

11 A. Incorrect. She was offended by me comparing her to
12 Leticia.

13 Q. Ms. Johnson specifically stated to you, "I'm really
14 offended by that, I don't think, I don't think that I do,"
15 When you called her a nigger, didn't she?

16 MS. KREBS: Objection, your Honor.

17 THE COURT: Yeah. If you don't understand that
18 context, he'll be glad to explain it further. But if you do,
19 you can answer it.

20 MS. KREBS: Your Honor, if he's going to mention that,
21 I would request that the entire thing be taken this context.
22 There was more to that conversation and to her statement.

23 MR. UMANSKY: Your Honor, may I have a second, please.

24 THE COURT: Sure.

25 MR. UMANSKY: Your Honor, may I approach the witness?

D8snjoh3

Carmona - cross

1 THE COURT: You may.

2 BY MR. UMANSKY:

3 Q. If you go through the books in front of you?

4 A. Which one.

5 Q. I want you to pull out Exhibit 18.

6 A. Which book?

7 Q. It would probably be volume 2 of 3.

8 A. OK. Volume 2 of 3?

9 Q. Yes.

10 A. OK. Got it.

11 Where am I going?

12 Q. Looking at Exhibit 18, page 2, paragraph 66.

13 Now, Exhibit 18, do you recall what that is?

14 A. I'm trying to get it. Hold on a minute.

15 OK. Exhibit 18, paragraph -- where am I now.

16 Q. Just going to the first page. Do you know what this
17 document is?

18 A. Yes. It seems to be a writeup.

19 Q. This is Andy Rahl's interview notes, correct, of the entire
20 investigation?

21 A. OK.

22 Q. Involving Ms. Johnson?

23 A. OK.

24 Q. Go to page 2, paragraph 66.

25 A. OK.

D8snjoh3

Carmona - cross

1 Q. Actually, can you please read for the record paragraphs 65
2 and 66?

3 A. "RC said that he had this conversation with BJ, but in this
4 context, but not in this context. And that BJ had not told him
5 she was offended."

6 Q. Mr. Carmona please start with paragraph 65 and go to 66.
7 When you say RC, is that Robert Carmona?

8 A. That's me right.

9 "RC said that he had said ghetto, not nigger. And
10 this conversation (otherwise) did happen, but there was no
11 hostility at all.

12 "By ghetto, RC meant you can act really low class. RC
13 also said that (in this context) nigger is a word used in
14 conversation, but not disparagingly."

15 Q. So in that interview with Andy Rahl, you told Mr. Rahl that
16 you called Ms. Johnson ghetto, not a nigger, isn't that true?

17 A. Yes, but I didn't recall really.

18 Q. Then your story changes. You told Philip Weinberg that you
19 may have called Ms. Johnson a nigger, didn't you?

20 A. Yes, I guess.

21 Q. Story number three. At your deposition you testified that
22 you never denied using the word nigger, isn't that true?

23 A. Yes, I guess.

24 Q. In fact you testified "I never deny it. Yes. I never
25 denied it. What I said to him was that I might have said that

D8snjoh3

Carmona - cross

1 I used the word ghetto or nigger. I didn't really recollect
2 because it wasn't all of that to me. It wasn't something that
3 was at the forefront of my mind."

4 Really, Mr. Carmona?

5 MS. KREBS: Objection Your Honor.

6 Q. Calling Ms. Johnson a nigger wasn't all of that to you?

7 MS. KREBS: Objection, your Honor.

8 THE COURT: Overruled.

9 Q. Calling Ms. Johnson --

10 THE COURT: You are not going to repeat it a third
11 time.

12 MR. UMANSKY: I have another question, your Honor.

13 THE COURT: You don't want him to answer that one?

14 MR. UMANSKY: No, your Honor.

15 BY MR. UMANSKY:

16 Q. Calling Ms. Johnson a nigger wasn't something that was at
17 the forefront of your mind?

18 A. No, it wasn't.

19 Q. But now we know that you did in fact call Ms. Johnson a
20 nigger, isn't that true?

21 A. Yes.

22 Q. During your conversation with Philip Weinberg in this
23 investigation, he responded to you calling Ms. Johnson a nigger
24 by simply stating, Oh, OK, isn't that true?

25 A. Yes.

D8snjoh3

Carmona - cross

1 Q. When you elaborated to Mr. Weinberg that you called
2 Ms. Johnson a nigger because you believed that her behavior
3 wasn't helpful to her own efforts, Mr. Weinberg responded by
4 saying, That's interesting. Isn't that true?

5 A. I don't recollect all of that 'I guess.

6 Q. Page 124 of your deposition, line 17?

7 A. Where am I now?

8 Q. Page 124 of your deposition.

9 A. Is that volume 1 of 3.

10 Q. It would be volume 1 of 3.

11 A. 1 of 3. 124?

12 Q. 124.

13 A. Huh?

14 Q. Yes. Exhibit 3?

15 A. OK. Got it. I think.

16 Q. Line 12 through line 22.

17 "Q. And which one of those categories, if any, did you
18 indicate to Mr. Weinberg was the one that Ms. Johnson fell into
19 the category of?

20 "A. The latter.

21 "Q. And which one was that?

22 "A. That her behavior wasn't helpful to her own efforts.

23 "Q. And what, if anything, did Mr. Weinberg say in response to
24 that?

25 "A. That's interesting."

D8snjoh3

Carmona - cross

1 Do you recall being asked those questions and giving
2 that testimony.

3 A. I remember being asked the questions, yes.

4 Q. You then met with Mr. Weinberg and Mr. Rahl, and Mr. Andy
5 Rahl told you that if you used that kind of nomenclature again
6 you could be subject to termination, isn't that true?

7 A. Yes, he did.

8 Q. Isn't it also true that Mr. Rahl was referring to the word
9 ghetto as nomenclature, not nigger, correct?

10 A. I don't know. I don't know. To me they were
11 interchangeable, so I don't know.

12 Q. I didn't ask you that, Mr. Carmona?

13 A. Well, that's my response.

14 Q. Isn't it also true that Mr. Rahl was referring to the word
15 ghetto not the word nigger when he said that to you? Yes or
16 no?

17 THE COURT: Sustained.

18 A. Well, it's --

19 THE COURT: You don't have to answer that.

20 MS. KREBS: Move to strike.

21 THE COURT: Stricken.

22 Q. When Mr. Rahl interviewed you, you have already testified,
23 you indicated to him that you didn't use the word nigger, you
24 called Ms. Johnson ghetto, correct?

25 MS. KREBS: Objection.

D8snjoh3

Carmona - cross

1 THE COURT: If he said it, it's OK. The other
2 question called for some operation of his mind, so it was not
3 admissible. But you may answer this question.

4 BY MR. UMANSKY:

5 Q. Mr. Carmona, you have already testified --

6 A. Right.

7 Q. -- that when Mr. Andy Rahl interviewed you in regards to
8 this investigation you told him that you called Ms. Johnson
9 ghetto, you didn't call her a nigger, correct?

10 THE COURT: I think asked and answered is not a bad
11 objection. I will sustain it.

12 BY MR. UMANSKY:

13 Q. Mr. Carmona, are you aware that STRIVE contains an
14 antidiscrimination and antiharassment policy?

15 A. Yes, I am.

16 Q. Where is that policy found?

17 A. It would be in the -- where is it found you said?

18 Q. Yes.

19 A. Well, it's given out to staff, but the body of it is housed
20 I think in the HR office.

21 Q. That policy is in the employee handbook of STRIVE, correct?

22 A. Yes.

23 Q. In fact, you actually received training in STRIVE's
24 antidiscrimination and antiharassment policy, correct?

25 A. Yes, we have.

D8snjoh3

Carmona - cross

1 THE COURT: Is that it, Mr. Umansky?

2 MR. UMANSKY: I'm sorry, your Honor. Just one more
3 minute.

4 Q. Mr. Carmona, can you please pull up Exhibit 33.

5 A. In which book.

6 Q. Which would probably be volume 2 of 3.

7 A. 2 of 3? Which one?

8 Q. Exhibit 33?

9 A. 33?

10 Q. Yes.

11 THE COURT: I am sure you have read my ruling so that
12 we will, as we did a day or two ago -- it seems like a year --
13 we will only be asking him about Section 5.

14 MR. UMANSKY: Your Honor, we are publishing Exhibit 33
15 to the jury.

16 THE COURT: Only 5?

17 MS. MESIDOR: Yes, your Honor.

18 MR. UMANSKY: Only 5.

19 THE COURT: It seems to me I have heard this before.
20 We really don't need to do this, to try this case too many
21 times.

22 He's testified that he knows it's here and he knows
23 it's in the handbook and we have discussed it before. So let's
24 move on Mr. Umansky, unless you're finished, which is another
25 option.

D8snjoh3

Carmona - cross

1 MR. UMANSKY: Your Honor, I would just request that I
2 could ask him a few more questions about this.

3 THE COURT: No.

4 BY MR. UMANSKY:

5 Q. Mr. Carmona, you agree that using the word nigger is not
6 appropriate in any work setting, correct?

7 THE COURT: Sustained.

8 This 33 is in evidence, but as I made clear, and I
9 think counsel understood it, there are other sections but they
10 are inapplicable to this lawsuit. So that's why I have
11 admitted only Section 5 which you have before you.

12 BY MR. UMANSKY:

13 Q. Mr. Carmona, being admonished by Andy Rahl and threatened
14 with termination didn't derail your conduct at all, did it?

15 A. Sorry.

16 Q. Being admonished by Andy Rahl and being threatened with
17 termination didn't derail your conduct at all, did it?

18 MS. KREBS: Objection.

19 THE COURT: He can answer. It's cross-examination.
20 Overruled.

21 A. Yes, it did.

22 Q. It did?

23 Isn't it true that after STRIVE received Ms. Johnson's
24 complaint you then began to retaliate against her?

25 A. No.

D8snjoh3

Carmona - cross

1 Q. You told Jamar Cooks that he is no longer to visit
2 Ms. Johnson, isn't that true?

3 A. Yes.

4 Q. You said this to Mr. Cooks, that he can't visit Ms. Johnson
5 in front of Crystal Batista, correct?

6 A. I'm sorry?

7 Q. You told Mr. Jamar Cooks that he cannot visit Ms. Johnson
8 anymore in front of Crystal Batista, isn't that true?

9 A. Yes.

10 Q. Then, when Ms. Johnson attempted to complain to Lisa Stein
11 about what you said to Jamar Cooks, you slammed the door in her
12 face, correct?

13 A. No, I did not slam the door.

14 Q. You testified on direct that you didn't slam the door, you
15 closed it, correct?

16 A. I closed the door.

17 Q. Please go to your deposition testimony, Exhibit 3.

18 A. 1 of 3?

19 Q. 1 of 3. It should be in front of you by now.

20 A. Well, I have both of them. What page am I going to?

21 Q. 101?

22 A. Got it.

23 MS. KREBS: Would you identify the lines, please.

24 MR. UMANSKY: Sure.

25 A. Got it.

D8snjoh3

Carmona - cross

1 MR. UMANSKY: Lines 21 through 25.

2 "Q. When did that conversation take place?

3 "A. When I got angry at her, at one point when she barged in
4 on a meeting we were having, and I slammed the door."

5 Were you asked that question and did you give that
6 answer at your deposition?

7 A. Yes, I did.

8 Q. So which one is it, Mr. Carmona, were you lying then or are
9 you lying now?

10 A. Neither.

11 MS. KREBS: Objection, your Honor.

12 THE COURT: You've got to wait until I rule.

13 THE WITNESS: Oh, sorry.

14 THE COURT: That's all right.

15 THE WITNESS: Sorry.

16 THE COURT: I will overrule the objection since in
17 fact you answered the question.

18 BY MR. UMANSKY:

19 Q. You slammed the door on Ms. Johnson even though she clearly
20 stated, Don't slam the door on me, didn't you?

21 A. No.

22 MR. UMANSKY: Your Honor, considering the answer, I
23 request to play a recording which is Exhibit 82, audio
24 recording No. 18, and also the transcript, No. 83.

25 THE COURT: Denied.

D8snjoh3

Carmona - cross

1 MR. UMANSKY: Your Honor, Mr. Carmona's testimony is
2 inconsistent with the audio recording.

3 THE COURT: Well, unfortunately, your transcripts are
4 inconsistent with the audio recordings, to say nothing of four
5 other objections, all of which I put on the record heretofore,
6 and I've ruled.

7 MR. UMANSKY: Your Honor, I misspoke. There is no
8 transcript to this recording.

9 THE COURT: I am not listening to it. I can't
10 understand the ones that you think that you have or think you
11 have transcripts for.

12 BY MR. UMANSKY:

13 Q. Mr. Carmona, when you slammed the door on Ms. Johnson's
14 face, your behavior was so unacceptable that Mr. Weinberg even
15 admonished you for that, isn't that true? Mr. Carmona, I'm
16 asking you the questions here. Isn't it true --

17 MS. KREBS: Objection, your Honor.

18 THE COURT: He can ask the question. Did you hear the
19 question?

20 THE WITNESS: Yes, I did.

21 THE COURT: All right. Sustained.

22 Once again -- never mind. It is not worth it.

23 MR. UMANSKY: Your Honor, is that a sustained
24 objection to which question?

25 THE COURT: Your question to him about, your last

D8snjoh3

Carmona - cross

1 question to him. When you slammed the door. You want me to
2 read it back to you?

3 MR. UMANSKY: No, that's fine.

4 BY MR. UMANSKY:

5 Q. You admitted to Mr. Weinberg that it was wrong for you to
6 slam the door on Ms. Johnson, correct?

7 A. It was wrong for me to close the door, yeah.

8 Q. That wasn't my question.

9 Did you admit to Mr. Weinberg that it was wrong for
10 you to slam the door on Ms. Johnson?

11 A. Yes.

12 Q. When Ms. Johnson was having lunch with Cammie Crawford and
13 Lynette Hall, you walked by and told them to wrap it up, isn't
14 that true?

15 A. Yes, sir.

16 THE COURT: You are 20 minutes from the time I asked
17 you about how long you would be.

18 MR. UMANSKY: Your Honor, I'm almost done.

19 BY MR. UMANSKY:

20 Q. Then you summoned Cammie Crawford and Lynette Hall into
21 your office and warned them not to be used by Ms. Johnson,
22 correct?

23 A. No, I did not.

24 Q. Please go to page 135 of your deposition, line 25.

25 A. Got it.

D8snjoh3

Carmona - cross

1 MS. KREBS: Where are you reading to?

2 MR. UMANSKY: Line 25, page 135, to line 5, page 136.

3 A. I got it.

4 MS. KREBS: Your Honor.

5 THE COURT: Yes.

6 MS. KREBS: If he's going to read that, I would also
7 request that he read from page 137, line 4, which is in the
8 middle, cutting short a very long thing, through 137, line 11.

9 THE COURT: I don't think that helps or hurts either
10 of you. I will deny your application for the additional
11 language.

12 If you choose to read it, you can read that on your
13 redirect, although I am not sure why you would.

14 Go ahead. You have your lines together on 135. Go
15 ahead and read them, Mr. Umansky.

16 BY MR. UMANSKY:

17 Q. Mr. Carmona, page 135 of your deposition, line 25.

18 A. Right.

19 Q. "Q Do you remember having a conversation with
20 Ms. Lynette Hall or Ms. Cammie Crawford in which you told them
21 not to be used by Ms. Johnson?

22 "A. Yes, I did."

23 Were you asked the following question and did you give
24 the following answer during deposition testimony?

25 A. Yes. The answer was wrong. I did not mention Brandi's

D8snjoh3

Carmona - cross

1 name at all.

2 MR. UMANSKY: Your Honor, move to strike at
3 nonresponsive.

4 THE COURT: Overruled.

5 Once again it is the jury's decision as to whether or
6 not that's impeachment material at all.

7 Are you done?

8 MR. UMANSKY: I'm almost done, your Honor.

9 BY MR. UMANSKY:

10 Q. During direct you testified that STRIVE had a policy in
11 place for no congregating near the desks during lunch hours,
12 correct?

13 A. I said I thought they did.

14 Q. You thought they did.

15 Isn't it true that that policy was implemented
16 immediately after you told Ms. Crawford, Ms. Hall, and
17 Ms. Johnson to wrap it up?

18 A. I don't recollect that.

19 Q. I would like you to go to Exhibit 6?

20 A. In my testimony?

21 Q. No.

22 A. What page?

23 Q. Exhibit 6 would probably be in book 2 of 3.

24 MS. KREBS: What is Exhibit 6?

25 MR. UMANSKY: It is the deposition of Philip Weinberg.

D8snjoh3

Carmona - cross

1 MS. KREBS: I'm sorry, your Honor. I don't understand
2 how he can use Mr. Weinberg's testimony to impeach Mr. Carmona.

3 THE COURT: I don't either, but we'll find out, right.
4 A. I don't have an exhibit 6 in 2 of 3. Is it 2 of 3?

5 THE COURT: Well, it is not really worthwhile taking
6 the time to do this.

7 We will adjourn now. We will see you at 2:15.

8 Have a good lunch and do not discuss the case among
9 yourselves or with anybody else.

10 (Luncheon recess)

D8snjoh3

Carmona - cross

A F T E R N O O N S E S S I O N

2:20 p.m.

(In open court; jury present)

THE COURT: You have about five or 10 minutes, Mr. Unamsky, because I assume you put it altogether over lunch. So let's start.

MR. UNAMSKY: Thank you, your Honor.

BY MR. UNAMSKY:

Q. Mr. Carmona, you still call people at STRIVE a nigger, correct?

MS. KREBS: Objection, relevance.

THE COURT: Overruled.

A. In conversations with friends, yes, I uses the word.

Q. You still call employees at STRIVE nigger, correct?

A. Friends, yes.

Q. Mr. Carmona, you recall attending a mediation in this case, don't you?

MS. KREBS: Objection, your Honor.

MR. UNAMSKY: I will not be discussing anything about the mediation.

MS. KREBS: Objection, your Honor.

THE COURT: He can mention the word.

Yeah, he recalls it. What is the question?

Q. Mr. Carmona, after that mediation, you had three separate conversations with Mr. Weinberg and Ms. Stein during which you

D8snjoh3

Carmona - cross

1 all discussed that this case was just a giant waste of time,
2 isn't that true?

3 A. Yes.

4 Q. Isn't it also true that Mr. Weinberg believed you to be
5 such a hothead that prior to your deposition, he told you to
6 maintain your cool?

7 MS. KREBS: Objection.

8 THE COURT: Sustained. You have to rephrase it if you
9 can.

10 Q. Isn't it in fact true that Mr. Weinberg prior to your
11 deposition told you to maintain your cool?

12 A. Yeah.

13 Q. Mr. Weinberg also told you that my law firm was going to
14 try to set you up, correct?

15 MS. KREBS: Objection.

16 THE COURT: What does that mean? Sustained.

17 Q. In fact, heading into your deposition, you thought that
18 plaintiff Brandi Johnson's case was so bad you had to pretend
19 that you were taking all of this seriously, isn't that true?

20 MS. KREBS: Objection.

21 THE COURT: I will allow it. If that is true, you can
22 say yes. If it is not true, you can say no, and we'll keep
23 moving.

24 A. No.

25 Q. I am waiting for your answer.

D8snjoh3

Carmona - cross

1 THE COURT: He said no.

2 A. I did.

3 Q. You had so much indifference to this case at one point
4 during your deposition you insisted on playing with your phone
5 instead of testifying?

6 THE COURT: Sustained.

7 Q. You were playing with your phone while Marjorie Mesidor, a
8 black female, was taking your deposition testimony, isn't that
9 true?

10 THE COURT: Sustained.

11 Q. Mr. Carmona, are you taking this case seriously now?

12 MS. KREBS: Objection.

13 THE COURT: Sustained.

14 MR. UNAMSKY: Two more questions, your Honor, I
15 promise.

16 THE COURT: Can I count?

17 MR. UNAMSKY: Sure.

18 Q. Mr. Carmona, did you ever apologize to Ms. Johnson for
19 calling her a nigger?

20 A. No.

21 Q. Would you like to apologize to her now?

22 A. No.

23 MR. UNAMSKY: No further questions.

24 THE COURT: Any redirect briefly?

25 MS. KREBS: Yes, very briefly, your Honor.

D8snjoh3

Carmona - cross

1 REDIRECT EXAMINATION

2 BY MS. KREBS:

3 Q. Good afternoon, Mr. Carmona.

4 A. Good afternoon.

5 Q. Just a very few brief questions.

6 On your cross-examination you were asked about saying
7 that you may have said black women get in the way of
8 themselves.

9 Do you recall that testimony?

10 A. Yes. Yes.

11 Q. What do you mean by that?

12 A. I think that a lot of times, you know, that women in the
13 black community have been subject to a lot of pain, right. It
14 could be that, you know, they get married to the guy, he is
15 upstate, they get holding children, holing up the community.
16 Sometimes that pain turns into a whole bunch of anger. It
17 sometimes gets in the way of communication.

18 Q. Who, if anyone, else do you believe can get in their own
19 way?

20 A. Everybody in some respects.

21 Q. You recall testimony with respect to your statement that
22 Ms. Stein was not your boss?

23 A. Yes.

24 Q. You discussed before --

25 THE COURT: It was the reverse.

D8S6JOH4

Carmona - redirect

1 MS. KREBS: I am sorry. Well, right. Yes. Thank
2 you, your Honor.

3 Q. Who, if anyone, has the authority to discipline you?

4 A. The board.

5 Q. Who, if anyone, has the authority to fire you?

6 A. The board.

7 Q. You testified about communications that you had with
8 Mr. Andy Rahl and Mr. Phil Weinberg with respect to --

9 A. Yes.

10 Q. -- their investigation of the allegations.

11 Do you recall that on cross-examination?

12 A. Yes.

13 Q. Was that in two separate meetings, one with Mr. Rahl and
14 one with Mr. Weinberg, or was that in one meeting with both of
15 them together in the room?

16 A. That was one meeting.

17 Q. They were both there at the same time?

18 A. Yes.

19 Q. You said your story one time?

20 A. Right.

21 Q. And do you have any personal knowledge of their note-taking
22 process?

23 A. No.

24 MR. UNAMSKY: Objection, outside the cross.

25 THE COURT: I thought I sustained the objection in

D8S6JOH4

Carmona - redirect

1 that area anyway, but go ahead.

2 MS. KREBS: May he answer that question?

3 THE COURT: Yes.

4 A. What was the question again?

5 Q. Do you have any personal knowledge of their note-taking
6 process?

7 A. No, I do not.

8 MS. KREBS: Your Honor, pursuant to your comment
9 earlier that I would be allowed to read in a little bit of
10 deposition testimony on the topic of the communication that he
11 had, that Mr. Carmona had with Ms. Hall and Ms. Crawford --

12 THE COURT: Tell me the page and line number instead
13 of trying to explain it and I will tell you if I agree.

14 MS. KREBS: Sure. Page 137 starting toward the end of
15 line 4 through line 11.

16 MR. UNAMSKY: Objection, your Honor. I ask that it
17 start from the previous page and the entire answer be read.

18 MS. KREBS: I was trying to cut to the chase, but if
19 your Honor prefers --

20 MR. UNAMSKY: She has been putting in context all day
21 so we want it in context.

22 THE COURT: I have the line 4 to 11 on 137 is what I
23 thought that is what you read, but that is what you want to
24 read?

25 MS. KREBS: Yes. That had not been read. What had

D8S6JOH4

Carmona - redirect

1 been previously read --

2 THE COURT: It's okay.

3 Mr. Umansky, what is it that you think you need to
4 read to be contextual?

5 MR. UNAMSKY: We ask that she read from page 136, line
6 6 to page 137, line 11.

7 MS. KREBS: Your Honor, I probably should then start
8 with where they started previously because it is a follow-up
9 question where they are starting on line 6. Page 135, line 25.

10 MR. UNAMSKY: That's fine.

11 THE COURT: Through 137, line 11?

12 MS. KREBS: Correct.

13 THE COURT: We've heard that so many times. I can't
14 believe it. If you both want to do it that, you go right
15 ahead.

16 MS. KREBS: Thank you, your Honor.

17 BY MS. KREBS:

18 Q.

19 "Q. Do you remember having a conversation with Ms. Layette
20 Hall or Ms. Cammie Crawford in which you told them not to be
21 used by Ms. Johnson?

22 "A. Yes, I did.

23 "Q. And what did you mean by that?

24 "A. What Brandi started to do was both of them are located
25 outside my office directly. The first two desks you had was

D8S6JOH4

Carmona - redirect

1 theirs. When, you know, Brandi and I were incommunicado
2 because we were in lawsuit mode, right, what she would do is
3 sit herself at Cammie's desk or Lynette's desk and just jawbone
4 and laugh and hang out in front of my office and eat. I think
5 there was a thing where if you are going to eat, you have eat
6 in the kitchen or conference room. You shouldn't eat at your
7 desk because, you know, mice and, you know, etc., and so staff
8 was instructed that if you are going to eat, you go on to the
9 other areas. But Brandi, as I said, would come and hang out
10 outside my office and at one point they were eating there and I
11 came out and I said, Break this up, right. And I looked and I
12 said, You have to break this up now and get going and they
13 broke it up. And then they came to my office.

14 "Q. Who is they?

15 "A. Cammie and Layette.

16 "Q. What did they say?

17 "A. They basically asked me what that was about and I said,
18 Just don't allow yourselves to be used, and I left it at that."

19 Were you asked those questions and did you give those
20 answers during your deposition?

21 A. Yes.

22 MS. KREBS: I have nothing further.

23 THE COURT: You are excused.

24 (Witness excused)

25 THE COURT: What is next?

D8S6JOH4

Carmona - redirect

1 MR. MINNAH-DONKOH: At this time, your Honor, the
2 defendants call Philip Weinberg to the stand.

3 PHILIP WEINBERG,

4 called as a witness by the Defendants,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MINNAH-DONKOH:

8 Q. Good afternoon, Mr. Weinberg.

9 A. Good afternoon.

10 Q. Mr. Weinberg, how old are you?

11 A. 39.

12 Q. Are you married?

13 A. I am.

14 Q. Any children?

15 A. I have a four-year-old daughter.

16 Q. And are you currently employed?

17 A. I am.

18 Q. Who are you employed by?

19 A. STRIVE.

20 Q. What is your position with STRIVE?

21 A. Chief executive office.

22 Q. Please tell the jury what your general duties and
23 responsibilities as chief executive officer with STRIVE are?

24 A. There is a lot, but to keep it simple I can probably
25 describe it in a few key responsibilities. One is around our

D8S6JOH4

Weinberg - direct

1 clients, to make sure that we've got the right programs and
2 strategies to properly serve our participants. Two is around
3 funding, to make sure we have got the proper resources and
4 funds to deliver our services. The third is around our people,
5 to make sure we have the right team with the right talents who
6 are motivated to deliver services to our clients.

7 Q. We'll come back to your employment with STRIVE in a moment,
8 but let's take a step back and tell us about your educational
9 background.

10 A. Sure. I have got a bachelors of arts from Northwestern
11 University and masters of business administration from the
12 Working School at the University of Pennsylvania.

13 Q. Now, we've heard a lot so far about what STRIVE does. So I
14 won't get into it, but is STRIVE the first time you held
15 employment in sort of the public arena or providing public
16 service?

17 A. No. No. My passion, my career has been devoted to having
18 impact, public service. I have done that working for the
19 government. I have done that working for non profits. I have
20 done that working for-profit social ventures that were helping
21 the community.

22 Q. Give us a few examples of those positions that you just
23 testified to.

24 A. Sure. Immediately prior to joining STRIVE, I worked for
25 the City of New York. I was what was called the president of

D8S6JOH4

Weinberg - direct

1 an agency called the New York City Workforce Investment Board
2 and this was appointed by the mayor to set policy to help New
3 Yorkers get back to work.

4 Previously I had worked in more than one organization
5 helping to improve public schools. One is called Victory
6 Schools. That was focused on helping to improve public schools
7 in cities across the country.

8 Q. How did you come to learn of the position with STRIVE as
9 CEO?

10 A. I was contacted by a recruiter by a headhunter that I
11 learned was doing a search for new CEO for STRIVE.

12 Q. Do you recall what year that was?

13 A. That would have been the summer of 2011.

14 Q. And what happened after you were contacted by that
15 recruiter with respect to the CEO position with STRIVE?

16 A. I went through an interview process. I got to know both
17 the board of trustees, board of directors and the staff. I was
18 ultimately selected to be the CEO.

19 Q. When you say you went through an interview process, do you
20 recall the individuals that interviewed you?

21 A. I do.

22 Q. Who were those individuals?

23 A. There were -- there was a committee of the board of
24 directors that was charged with leading the search. So my
25 first stop was the board. I then was invited to come up to

D8S6JOH4

Weinberg - direct

1 Harlem to STRIVE and met with the senior team. I recall
2 meeting with Rob Carmona, Lisa, other members of the senior
3 team. I remember Larry Jackson, Earnest Johnson, Allen
4 Hartwell. And then I was brought back for a subsequent meeting
5 with the broader group of the board of directors.

6 Q. Now, you mentioned before that you met with or met with the
7 senior team as part of the interview process. Who were those
8 individuals?

9 A. At that time?

10 Q. Yes.

11 A. The senior team at that time would have been Rob; Lisa;
12 Earnest Johnson, the senior director of support services; Larry
13 Jackson, senior director career services; April Bland, director
14 to compliance; Maria Ortiz at that time the director of
15 training.

16 THE COURT: Was there a separate board of trustees
17 from the board of directors?

18 THE WITNESS: My apologies. It is one in the same.
19 We refer to them as the board of directors.

20 Q. Now, we have already met Ms. Bland and Ms. Ortiz during
21 this trial?

22 A. Correct.

23 Q. With respect to Earnest Johnson, what is his race?

24 A. He is an African-American male.

25 Q. What about Larry Jackson?

D8S6JOH4

Weinberg - direct

1 A. Also an African-American male.

2 Q. At some point after going through this interview process
3 were you in fact offered the position of CEO at STRIVE?

4 A. I was.

5 Q. Do you recall approximately when the first day you worked
6 as a CEO of STRIVE was?

7 A. I do. It was right after Thanksgiving 2011. So
8 November 2011.

9 Q. And what was the reason for you deciding to take upon this
10 role as CEO of STRIVE?

11 A. Well, I was passionate about the work -- the notion of
12 helping individuals realize their potential, gain skills and
13 have opportunity. And I have been doing this for the city for
14 the previous years on a macro level. I was really excited
15 about the opportunity to go into the community and have a more
16 direct impact on an issue that I felt very passionate about.

17 Q. And as the newly mentioned CEO of STRIVE what was one of
18 the first steps you took to sort of acclimate yourself to the
19 position?

20 A. Well, there was a lot to it. It was important for me to
21 establish relationships and trust with the staff. Probably
22 about 30 people worked full-time at STRIVE at that time. So
23 one of the first things I did was I set up an individual,
24 one-on-one conversation with every person who worked at STRIVE
25 just for the purpose of getting to know them, them getting to

D8S6JOH4

Weinberg - direct

1 know me, me to understanding their job and what they do, and
2 then to learn about their ideas for how we can move STRIVE
3 forward. It was also important for me to signal that my door
4 is open. I wanted to be accessible to everyone on the team.

5 Q. And as part of that meeting or meetings where you met with
6 different individuals, do you have a specific recollection of
7 meeting with the plaintiff in this case Brandi Johnson?

8 A. I believe I met with just about every person in the staff
9 who was employed at that time.

10 Q. And just focusing on the black female staff at STRIVE with
11 whom you met as part of these meeting. Do you recall any
12 complaints being made to you or any concerns being voiced to
13 you during any of these meetings about sort of the culture as
14 STRIVE as it pertains to black women?

15 MR. UNAMSKY: Objection.

16 THE COURT: I will allow it.

17 A. No.

18 Q. Now, Mr. Weinberg, you are familiar with the plaintiff in
19 this case, Ms. Brandi Johnson?

20 A. I am.

21 Q. And after you became CEO at STRIVE of November in 2011, did
22 there ever come a time when issues regarding Ms. Johnson's
23 performance were brought to your attention?

24 A. Yes.

25 Q. Approximately when was the first time you recall issues

D8S6JOH4

Weinberg - direct

1 regarding Ms. Johnson's performance being brought to your
2 attention?

3 A. I would have to say it was -- if I started in November it
4 started in later December, certainly in January.

5 Q. And please tell the jury what -- withdrawn.

6 In or around December of 2011 or January of 2012, who
7 first brought issues to your attention regarding Ms. Johnson's
8 performance?

9 A. It would have been Lisa.

10 Q. Lisa Stein?

11 A. Correct.

12 Q. And please tell the jury generally speaking what those
13 issues that were brought to your attention by Lisa Stein in or
14 around December 2011, January 2012?

15 A. I was aware from Lisa that she was having significant
16 challenges.

17 THE COURT: If these are assumptions and awareness,
18 that is really all inadmissible. If you had a conversation
19 with her --

20 THE WITNESS: Yes.

21 THE COURT: -- happily you might give us a date or a
22 month or maybe a year and you can give us what you said to her
23 and what she said to you. That would be admissible.

24 THE WITNESS: Right.

25 THE COURT: Not that I haven't let a lot of it. The

D8S6JOH4

Weinberg - direct

1 fact is, we ought to do it right if we can.

2 THE WITNESS: Thank you, your Honor.

3 Beginning in December and January Lisa brought to my
4 attention on multiple --

5 THE COURT: Is this a conversation?

6 THE WITNESS: Yes. Lisa had multiple conversations
7 with me that there were two staff members on her team, Brandi
8 and Christina, who were disruptive. There were communications
9 challenges. They were having trouble getting along and
10 honestly it was very concerning for me because I knew that Lisa
11 was spending a lot of time and energy trying to coach them,
12 guide them, support them and in some cases intervene on this
13 conduct.

14 BY MR. MINNAH-DONKOH:

15 Q. When you say it posed a lot of concern for you because Lisa
16 had to sort of intervene and deal with these issues between
17 Brandi and Christina, can you tell us more about what those
18 concerns were for you?

19 A. I can. We had a lot to do. We were in a very tough
20 financial position at that time with cash flow. We had a
21 number of programs that we were in the throes of implementing
22 and I really needed Lisa's attention focused on what I
23 considered top priorities of the organization and it was clear
24 to me through these conversations that Lisa was spending a lot
25 of time and energy mediating a conflict between two employees

D8S6JOH4

Weinberg - direct

1 and that was concerning for me.

2 Q. Separate and apart from issues that were brought to your
3 attention, performance issues that were brought to your
4 attention by Ms. Stein regarding Brandi Johnson, did you
5 personally ever experience any performance issues with
6 Ms. Johnson?

7 A. I did.

8 Q. Can you tell us about the performance issues you were
9 directly involved in regarding Ms. Johnson?

10 A. I can. Those would be subsequent to my becoming aware from
11 Lisa that there were real disruptive behavior issues. We began
12 to plan for what we called a Summit, which we were holding in
13 February, and this was an opportunity to bring the executive
14 directors, essentially the leaders from our affiliate
15 organizations -- so these are the nonprofits that are
16 administering the STRIVE program across the country -- we were
17 going to bring them together in for the first time in a long
18 time. It was a big deal. I asked Brandi to help me on a
19 number of aspects of that initiative.

20 Q. When you say that you asked Brandi to help you on a number
21 of aspects regarding that initiative, what specifically about
22 her performance as it pertains to that summit did you find to
23 be problematic?

24 MR. UNAMSKY: Objection.

25 THE COURT: What is your ground?

D8S6JOH4

Weinberg - direct

1 MR. UNAMSKY: Relevance.

2 THE COURT: Overruled. Go ahead.

3 A. There were multiple. I kind of categorize them sort of
4 before the summit, during the summit and after the summit.
5 Before the summit there were a lot of moving parts. People
6 flying in on different days. We had hotel arrangements to
7 make. We had lunches. We had venues. We needed materials and
8 supplies. I had asked Brandi to help me organize this and
9 coordinate it. It was sloppy. It was disorganized. I had
10 trouble understanding who was coming when and how many people
11 were going to be around for each session. It just made it very
12 hard to properly plan, place lunch orders, determine venue
13 size, how many hotel nights we needed. So the preplanning I
14 found disorganized and sloppy.

15 During the actual summit itself, I had asked Brandi to
16 help me on some of the day of the event activities. Namely,
17 the first day of the summit people were coming in and we needed
18 to set up the room. If the summit was called to start at a
19 certain hour, Brandi was late. She wasn't just late for the
20 time of the setup -- I was there early -- she was late for the
21 time when everyone else was called in. And all the advance
22 work we needed to do and set up, name badges and get the room
23 set, I was on my own. It left a very poor impression she would
24 be late to such a major event.

25 I had asked Brandi to take notes during part of the

D8S6JOH4

Weinberg - direct

1 summit. So the post-phase is at the conclusion I had asked
2 Brandi to pull together notes that summarized various
3 conversation and the notes were not forthcoming and when they
4 finally were they were of poor quality and not very usable and
5 I ended up having to essentially kind of redo them myself. So
6 from pre, during and after I found the performance lacking.

7 Q. Regarding the notes that you just testified to, did you
8 have a conversation with Brandi during which you informed her
9 that you thought her performance regarding the note-taking at
10 the summit was subpar?

11 A. I did. Shortly thereafter we determined after the summit
12 that we had a number of activities that we wanted to implement
13 from the summit had a conversation with Brandi about those
14 followup activities and I used that conversation as an
15 opportunity to inform her that I was disappointed with her
16 performance prior, disappointed with her follow-up activities,
17 including the notes, and I expected a higher level of
18 performance on these new initiatives, these new tasks that we
19 needed to do.

20 THE COURT: That is what you said to her. What did
21 she say to you?

22 THE WITNESS: I don't recall getting much of a
23 response from Brandi.

24 MR. MINNAH-DONKOH: Permission to approach the
25 witness, your Honor?

D8S6JOH4

Weinberg - direct

1 THE COURT: Yes.

2 MR. MINNAH-DONKOH: Your Honor, in addition I would
3 like to publish to the jury what is in evidence as Defendant's
4 Exhibit GG.

5 THE COURT: Very well. I assume it is admissible?

6 Q. Mr. Weinberg, what do you recognize Defendant's Exhibit GG
7 in evidence to be?

8 A. What do I recognize this exhibit to be?

9 Q. Yes.

10 A. I recognize it to be a series of e-mails first between
11 Brandi and another colleague at STRIVE, myself copied, with my
12 response and then a separate note that I sent to Lisa Stein who
13 was Brandi's supervisor at the time.

14 Q. Now, referring you to the middle portion of Exhibit GG,
15 your e-mail to Ms. Johnson at 3:07 p.m.?

16 A. Yes.

17 Q. What was your reasoning for telling her to hold off on her
18 notes?

19 A. They were delayed. At that point they were late. If I had
20 seen a version, it was sloppy and at this point I just needed
21 to -- I needed to move forward.

22 MR. MINNAH-DONKOH: Permission to approach the
23 witness, your Honor.

24 THE COURT: Very well. When you say I prefer to go
25 with our memo, are you talking about a memo that the plaintiff

D8S6JOH4

Weinberg - direct

1 prepared or that you and she prepared?

2 THE WITNESS: That would have been a memo that I
3 prepared.

4 THE COURT: But then you say on the Weinberg notes
5 which are I assume notes are you prepared?

6 THE WITNESS: Those were notes I believe, and I hope I
7 am getting right, another staff member had prepared that
8 portion of the notes. So we had collected various notes from
9 various folks including myself and Brandi's were never
10 forthcoming so we went with that package.

11 Q. Mr. Weinberg, I handed you a few seconds ago Defense
12 Exhibit O in evidence.

13 A. Yes.

14 Q. Give us an opportunity to publish that same exhibit to the
15 jury.

16 THE COURT: I think we published it once, but it
17 wouldn't surprise me if it was twice. Anyhow, that's fine. I
18 am certain we talked about it.

19 Q. Now, Mr. Weinberg, you testified earlier that subsequent to
20 the summit you had a conversation with Brandi in which you
21 informed her of issues you had with her performance about the
22 summit. Is that what Defense Exhibit O generally refers to?

23 A. Yes.

24 THE COURT: I have L. Are we talking O?

25 MR. MINNAH-DONKOH: Yes, your Honor.

D8S6JOH4

Weinberg - direct

1 THE COURT: Sorry. That is part of the problem here.

2 Q. Mr. Weinberg, other than issues that were brought to your
3 attention by Ms. Stein regarding Brandi's relationship with
4 Christina Saenz as well as issues that you personally had with
5 Ms. Johnson regarding the summit, did you also have any other
6 issues regarding her performance specifically that you can
7 recall?

8 A. I had minor issues on an ongoing basis.

9 Q. And what were those minor issues generally?

10 A. Well, they were largely related to the follow-up activities
11 from the summit and I think they are introduced in this Exhibit
12 O, where we had a lot of work to do coming out of the summit.
13 We really wanted to deliver on the goals we had set forth with
14 our affiliates. So I layed out a game plan, called it an
15 action plan, and I asked Brandi to be the point person, not on
16 the strategy for it but just coordinating the implementation,
17 like a traffic cop, just making sure things are staying on
18 point and I had asked Brandi for regular updates and keeping
19 things moving and I found that lacking as well.

20 THE COURT: Who are these affiliates that people have
21 been talking about for the whole case?

22 THE WITNESS: Good question. STRIVE is a unique
23 organization and it is an incredible thing in that we not only
24 provide services directly in New York City at our Harlem site
25 but across the country as STRIVE gained fame, in part because

D8S6JOH4

Weinberg - direct

1 we were featured a 60 Minute segment back in the '90s at the
2 height of welfare reform, communities across the country
3 resonated with that personal responsibility of help, some
4 called it a tough love approach, and they wanted to introduce a
5 STRIVE in their own community.

6 So we actually licensed them the STRIVE program and
7 the model and the services. So nonprofit organizations in
8 cities from Baltimore to Chicago to San Diego are actually
9 delivering the STRIVE training program in their communities.
10 We call these organizations collectively our affiliates.

11 THE COURT: Do they have their own name or do they all
12 go under STRIVE name?

13 THE WITNESS: Another good question. Both. Some of
14 them were formed exclusively to be STRIVE. We have STRIVE
15 Boston, STRIVE D.C. All they do is employment and training
16 related to the STRIVE model. Some of them might have been
17 preexisting organizations that had another mission and an
18 example of this would be our Baltimore called Center for Urban
19 Families. They focused on helping parents, dads connects with
20 their kids. When they wanted to introduce an employment
21 component, they shopped around, they identified STRIVE, and
22 they in turn licensed and incorporated STRIVE as one of the
23 services they provide as part of their portfolio of services.
24 So STRIVE is indeed both the name of the program that some
25 organizations deliver and also the name of some organizations

D8S6JOH4

Weinberg - direct

1 themselves in their communities.

2 BY MR. MINNAH-DONKOH:

3 Q. Mr. Weinberg, you testified to the affiliates that exist
4 within the United States. Does STRIVE also have affiliates
5 outside of the United States?

6 A. Yes.

7 Q. Can you name a couple examples of outside affiliates?

8 A. We have affiliates sites in both the United Kingdom and in
9 Israel.

10 Q. Mr. Weinberg, did there ever come a time when you came to
11 learn of a complaint that Ms. Johnson was filing against
12 STRIVE, specifically Ms. Carmona, for discrimination and
13 harassment?

14 A. Yes.

15 Q. When did you first learn of that complaint?

16 A. I remember it specifically. It was April 11th of 2012.

17 Q. How did you come to learn of the complaint?

18 A. I received a sealed package, an envelope. I was in my
19 office. I was probably the receptionist or someone brought me
20 a package. I shortly thereafter opened it and read what I
21 understood to be a complaint from the plaintiff alleging
22 discrimination.

23 Q. When you say "from the plaintiff," did the complaint -- the
24 envelope in which the complaint came in was it directly from
25 Ms. Johnson?

D8S6JOH4

Weinberg - direct

1 A. No, it was not. It was probably -- it was not from
2 Ms. Johnson. It was from Ms. Johnson's counsel.

3 Q. And at any time prior to April 11th, 2012, had Ms. Johnson
4 ever come to you with any complaints she had that she was being
5 discriminated or harassed because she was a black woman?

6 A. Never.

7 Q. And what was the first step you took after receiving the
8 complaint on April 11th, 2012?

9 A. I was concerned and this was a big deal. I took it very
10 seriously and I sprung into action for lack of a better word.
11 I had a series of conversations that afternoon. I recall
12 talking to Lisa Stein. I recall having a conversation with our
13 counsel. We had a pro bono legal firm who used us on
14 employment related issues who helped nonprofits like us for
15 free. I recall having a conversation with our board of
16 direct -- chairman of our board of directors.

17 Q. You mentioned sort of three groups of people that you spoke
18 with. First, Lisa Stein. What was your conversation with Lisa
19 Stein? What did she say to you or what did you say to her
20 rather and what did she say to you?

21 A. It was -- it was brief. It was. We found I am in receipt
22 of this complaint. Lisa was the head of our human resources
23 department and also named as a defendant in this case and we
24 talked about the course of action we needed to take to properly
25 investigate and address the issue.

D8S6JOH4

Weinberg - direct

1 Q. We'll come back to the course of action that you decided in
2 just a brief moment, but you just testified that Ms. Stein was
3 named in that particular complaint that STRIVE received as a
4 defendant?

5 A. Yes.

6 Q. Were you named as a target or defendant in that particular
7 complaint?

8 A. I was not.

9 Q. And going back to the cause of action that you and Lisa
10 decided to take with respect to the complaint that Ms. Johnson
11 was lodging, what was that course of action that was also
12 decided upon?

13 A. The course of action was that we would mount an
14 investigation, that as the CEO I would lead the investigation
15 in tandem with a member of our board of directors who was
16 assigned by our board. In this particular case there is a
17 gentleman on our board who is an attorney, somebody's whose
18 judgment I respected significantly, and so he and I were
19 coleading an investigation to get to the bottom of the
20 complaint.

21 Q. Now, if Ms. Stein was the HR person, why did you take the
22 lead in investigating the complaint?

23 A. I did not think it was proper for Lisa as somebody who was
24 named in the complaint. Even though she was the head of human
25 resources and might otherwise have been leading a process like

D8S6JOH4

Weinberg - direct

1 that, I did not think it was proper for her to be involved in
2 that complaint and so the investigation process so I led it
3 personally.

4 Q. You mentioned that an attorney on the STRIVE's board who
5 assisted with this investigation. What is the name of that
6 individual?

7 A. His name is Andy Rahl.

8 Q. And was there in fact an investigation conducted into the
9 allegations made by Ms. Johnson in the complaint you received
10 on April 11th, 2012?

11 A. Is the question did we ultimately embark on an
12 investigation.

13 Q. Yes.

14 A. Absolutely.

15 Q. What was the result of that investigation?

16 A. Well, I thought we conducted what I considered a very
17 thorough investigation into the allegations that were brought
18 and we concluded that while there was behavior that we thought
19 was inappropriate for a workplace that there was no
20 discrimination based on gender or race.

21 MR. MINNAH-DONKOH: Permission to approach the
22 witness, your Honor?

23 THE COURT: You may.

24 MR. UNAMSKY: Your Honor, I ask that counsel provide
25 with us a preview.

D8S6JOH4

Weinberg - direct

1 MR. MINNAH-DONKOH: I was just about to say --

2 THE COURT: Why don't you do it first. When you ask
3 to approach the witness with a new exhibit, on each occasion
4 will you tell us what it is you are proposing.

5 Hello?

6 MR. MINNAH-DONKOH: Yes, your Honor, I am about to.

7 THE COURT: I was in the middle of suggesting that you
8 do that on each occasion. I don't want to take you away from
9 whatever else you decided to do instead. It would be
10 appreciated if we knew in advance before you handed it to the
11 witness and what the exhibit was and what the exhibit number or
12 letter was and indeed if you could have it identified promptly
13 that would be helpful.

14 MR. MINNAH-DONKOH: Yes, your Honor. I am approaching
15 the witness with Plaintiff's Exhibit 15 in evidence.

16 May I have a brief moment, your Honor?

17 THE COURT: You may. My understanding from the
18 exhibit list is that plaintiff could introduce this but for you
19 to introduce it, it would be simply hearsay. I am not taking
20 it.

21 MR. MINNAH-DONKOH: Your Honor, this was an exhibit
22 that was jointly agreed to by the parties and your Honor
23 indicated that due to the fact that both parties had listed
24 duplicate of exhibits that we would only use one version.

25 THE COURT: What are you looking at, Exhibit 15?

D8S6JOH4

Weinberg - direct

1 MR. MINNAH-DONKOH: Yes, your Honor.

2 THE COURT: I am not clear that is my concern, but
3 let's go ahead. It is clearly not a party admission when you
4 are introducing it. But if both parties stipulated to its
5 admissibility, I think probably I will allow it, but I am not
6 at all clear why the plaintiff would let you introduce it.

7 Go ahead. If they have done it, that is fine with me.
8 Soon.

9 MR. UNAMSKY: Your Honor, this exhibit was part of a
10 larger exhibit. It was part of Exhibit EE, which is out.

11 THE COURT: It has been introduced?

12 MR. MINNAH-DONKOH: Your Honor, prior to the trial and
13 on the first day of trial, your clerk Jonathan Wong gave us an
14 exhibit list with both plaintiff's list and Defense exhibit
15 list. Exhibit 15 on that list was specifically in evidence.

16 THE COURT: What I have on my exhibit list is in as a
17 party admission offered by the plaintiff. This is not offered
18 by the plaintiff.

19 MR. UNAMSKY: I ask that be taken away.

20 THE COURT: If in fact you agreed with it, that is
21 okay with me.

22 MR. UNAMSKY: We had not agreed to it. I ask that it
23 be taken away from the jury.

24 THE COURT: You distributed it already?

25 MR. MINNAH-DONKOH: Yes, your Honor.

D8S6JOH4

Weinberg - direct

1 THE COURT: Take it away.

2 MR. MINNAH-DONKOH: Your Honor, I would place on the
3 record that we'll place our exception and note this is a
4 business record.

5 THE COURT: Nobody told me about a business record.
6 That is the first time I heard that exception to the hearsay
7 rule utilized in this case. You say that as if the Court
8 should understand that and why. You have done nothing to
9 support it as a business record.

10 MR. MINNAH-DONKOH: May I lay the foundation then,
11 your Honor?

12 THE COURT: It is up to you.

13 BY MR. MINNAH-DONKOH:

14 Q. Mr. Weinberg, in your role as CEO, is it part of your
15 duties and responsibility to address complaints that are made
16 by employees with respect to discrimination and harassment?

17 A. Yes.

18 Q. Is it part of your duties and responsibilities to
19 investigate those complaints?

20 A. Yes.

21 Q. And as the regular course of business when you investigate
22 those complaints, do you make findings?

23 A. Yes.

24 Q. Are those findings reduced to writing?

25 A. Yes.

D8S6JOH4

Weinberg - direct

1 Q. As part of the investigation of those complaints, do you
2 meet with individuals to as part of the investigation?

3 A. Yes.

4 Q. Do you take notes?

5 A. Yes.

6 Q. Are those notes taken contemporaneously, at the same time,
7 you had the meetings with individuals?

8 A. Yes.

9 Q. In this case regarding Ms. Johnson, do you follow the same
10 steps that you testified to with respect to her?

11 A. Yes.

12 MR. MINNAH-DONKOH: At this time, your Honor, I would
13 now like to move what was identified as Plaintiff's Exhibit 15
14 into evidence.

15 MR. UNAMSKY: Objection, your Honor. Lack of
16 foundation. Not offered for its truth.

17 THE COURT: Is this a record that you keep in the
18 regular course of your business? I guess I assume that there
19 are not of lot of investigations like this.

20 THE WITNESS: Correct.

21 THE COURT: So this is essentially a unique business
22 record?

23 THE WITNESS: So far during my time at STRIVE, that's
24 correct.

25 THE COURT: I am keeping it out.

D8S6JOH4

Weinberg - direct

1 BY MR. MINNAH-DONKOH:

2 Q. Well, Mr. Weinberg, as part of the investigation into
3 Ms. Johnson --

4 THE COURT: I should tell you hearsay is a complicated
5 evidentiary issue. We will not discuss all of the problems.
6 It essentially relates to not under oath out-of-court
7 statements, but there are a lot of exceptions. The key to why
8 we have a hearsay rule is reliability. We don't like the
9 courts, not just me, don't want to take into evidence for the
10 jury to look at or read or listen to anything that is
11 unreliable. One of the exceptions to that rule is called a
12 business record exception because the legislature believes and
13 believed that if there is a record that is kept in the regular
14 course of business of an entity that it would be reliable.
15 Indeed, it is not really black and white. When it is the only
16 one of its kind even though it sounds right, I am not allowing
17 it. That's an overview of where we are.

18 Go right ahead, sir.

19 BY MR. MINNAH-DONKOH:

20 Q. Mr. Weinberg, after the conclusion of your investigation
21 into Ms. Johnson's complaint was there a written record of your
22 conclusion?

23 A. Yes.

24 Q. And do you recall exactly what was written on that
25 document?

D8S6JOH4

Weinberg - direct

1 THE COURT: We don't need exactly. Unless you have
2 verbatim in your head.

3 A. I do not have it verbatim. I am --

4 THE COURT: I think he already testified.

5 Q. Is there anything that would refresh your recollection?

6 THE COURT: He has already testified to how they came
7 out. That is what we've been talking about for the last few
8 days. We try a case once.

9 Q. Mr. Weinberg, as part of the investigation along with
10 yourself and Mr. Rahl, what was the first step you took to
11 investigate Ms. Johnson's complaint?

12 THE COURT: He talked to Ms. Stein.

13 A. Correct. The first step I talked to Ms. Stein.

14 THE COURT: The concept here is really not tricky.
15 What we would like to do is get as much before the jury and do
16 it as succinctly as we can because that is the way they
17 remember and indeed they don't get tired listening.

18 MR. MINNAH-DONKOH: Your Honor, with all due respect
19 he testified the first conversation he had with Mr. Stein --
20 Ms. Stein rather was with himself alone. I am now asking him
21 as part of the actual investigation what he and Mr. Rahl took,
22 the first steps.

23 THE COURT: Very well. We'll listen to that in terms
24 of what he did. I don't know anything about Mr. Rahl, but it
25 certainly would be hearsay.

D8S6JOH4

Weinberg - direct

1 A. So the very first thing we did is we set up interviews with
2 the key individuals who were named in the complaint and
3 Mr. Rahl came to STRIVE. It was within a week. It was the
4 following week after the complaint was alleged -- was
5 delivered. Mr. Rahl came and we conducted together a series of
6 interviews with folks that had been named.

7 Q. Now, during those interviews that you conducted with
8 Mr. Rahl, were these interviews conducted separately or did you
9 conduct them at the same time with Mr. Rahl?

10 A. At the same time with Mr. Rahl.

11 Q. And what, if anything, did you tell the individuals who
12 were interviewed as part of the investigation process as to
13 confidentiality of what they told you?

14 A. Everything was always confidential. It was clearly in the
15 case Rob and Lisa they were aware there had been a complaint
16 brought by Brandi. In the case of anybody else that I had to
17 bring in as part of the investigation, I was very careful to
18 either not mention the name of the person who had brought the
19 complaint or if they had to be privy to that because of certain
20 circumstances that this was to be a confidential matter to be
21 discreet and not to be discussed outside of the investigation.

22 Q. As part of your investigation of Ms. Johnson's complaint,
23 did you speak with Ms. Johnson to find out more details about
24 what she had alleged in the complain?

25 A. I tried to.

D8S6JOH4

Weinberg - direct

1 Q. When you say you tried to, what do you mean by that?

2 A. I mean that -- if I could offer some brief timeline on this
3 because it might be helpful to the jury.

4 Q. Sure.

5 A. I received the complaint on the 11th. On the 12th I asked
6 Brandi to come into my office and I informed her that I was in
7 receipt of her complaint, that I would be leading an
8 investigation. She informed me that she was going on vacation
9 for the week. In that meantime I started the investigation.
10 When Brandi returned to the office the following week, I asked
11 her to come back to my office. I informed her that I had in
12 fact begun the investigation and as part of that investigation,
13 myself and Andy Rahl from our board were interested in setting
14 up an appointment with her to discuss the allegations made in
15 the complaint.

16 Q. And what was Ms. Johnson's response to you telling her that
17 you wanted to set up an appointment with her and Mr. Rahl to
18 discuss the allegations?

19 A. That her counsel had advised her not to participate in the
20 investigation.

21 Q. Now, Mr. Weinberg, during the course of this trial, you
22 heard two audio recordings?

23 A. Correct.

24 Q. At any time starting from the date that you received
25 Ms. Johnson's complaint on April 11th, 2012 until Ms. Johnson's

D8S6JOH4

Weinberg - direct

1 employment ended on June 11th, 2012, were you provided any
2 audio recordings that Ms. Johnson had taken of any
3 conversations of any STRIVE employees?

4 A. No.

5 Q. With respect to Ms. Johnson's allegation that she was
6 harassed and discriminated against because she was a black
7 woman, what specific steps if any did you take to investigate
8 that aspect of her complaint?

9 A. We investigated each and every allegation that was raised
10 in the complaint itself.

11 Q. Did you speak with any black women at STRIVE to see how
12 they felt about the general environment at STRIVE and
13 specifically with respect to Ms. Carmona?

14 MR. UNAMSKY: Objection.

15 A. Yes.

16 THE COURT: Overruled.

17 Q. And what was the feedback received from the black female
18 staff that you interviewed with respect to how they felt about
19 the culture at STRIVE?

20 MR. UNAMSKY: Objection.

21 THE COURT: Sustained.

22 Q. Did any of the black female staff you interviewed express
23 concern about the culture at STRIVE as it pertains to them as
24 black women?

25 THE COURT: Sustained.

D8S6JOH4

Weinberg - direct

1 A. No.

2 MR. UNAMSKY: Move to strike, please.

3 THE COURT: I strike that answer.

4 It is helpful if you wait for my rulings. Maybe it is
5 the only one, but it will be helpful.

6 THE WITNESS: Yes, sir.

7 (Continued on next page)

D8SNJOH5

Weinberg - direct

1 Q. Mr. Weinberg, as part of your investigations of
2 Ms. Johnson's complaint, were you ever given an opportunity by
3 Ms. Johnson to sit down with her and speak with her about the
4 specific allegations contained in her complaint.

5 THE COURT: Sustained.

6 Q. Mr. Weinberg, did there come a time when you had a meeting
7 with Ms. Johnson during which you advised her that her
8 employment was coming to an end as a result of the Pathways Out
9 of Poverty grant also coming to an end?

10 A. Yes.

11 Q. Do you recall the date on which you had that conversation
12 with her?

13 A. Yes, June 11.

14 MR. MINNAH-DONKOH: Permission to approach the
15 witness, your Honor, with Defendants' Exhibit S, which is in
16 evidence, a June 11, 2012 e-mail from Mr. Weinberg to
17 Ms. Johnson.

18 THE COURT: Excellent. Yes, you may.

19 BY MR. MINNAH-DONKOH:

20 Q. Mr. Weinberg, do you recognize Defendants' Exhibit S in
21 evidence?

22 A. Yes.

23 THE COURT: What do you recognize it as?

24 THE WITNESS: I recognize this to be the memo that I
25 provided to Brandi to summarize and codify our discussion about

D8SNJOH5

Weinberg - direct

1 the end of her employment as well as to advise her on next
2 steps regarding her benefits.

3 BY MR. MINNAH-DONKOH:

4 Q. Now, Ms. Johnson, as referenced in this document, her
5 employment ended on June 11, 2012, correct?

6 A. Correct.

7 Q. Pursuant to the Pathways Out of Poverty grant, which funded
8 her position, that grant was supposed to end on June 30, 2011.

9 A. Correct.

10 Q. 2012, rather.

11 MR. UMANSKY: Objection.

12 THE COURT: I didn't hear you.

13 MR. UMANSKY: Objection. Leading the witness.

14 THE COURT: It is nothing new.

15 MR. MINNAH-DONKOH: I will withdraw the question, your
16 Honor, and rephrase it.

17 BY MR. MINNAH-DONKOH:

18 Q. When was the Pathways Out of Poverty grant supposed to end?

19 A. At the end of June 2012.

20 Q. After Ms. Johnson's employment ended on June 11, 2012,
21 what, if anything, was done with respect to her salary or
22 paying her salary?

23 A. We continued paying Brandi through the remainder of the
24 grant term, which would have been the remainder of the month.
25 I think that was three weeks of pay.

D8SNJOH5

Weinberg - direct

1 Q. And what was the reason for her employment ending on June
2 11, 2012 if the grant was ending at the end of June?

3 MR. UMANSKY: Objection.

4 THE COURT: Overruled.

5 A. The reality was that the substance of work that needed to
6 happen as part of the grant was largely complete. And it
7 seemed best for Brandi to give her three weeks of time to
8 manage her transition and look for new work, so it just seemed
9 like the right thing to do.

10 MR. MINNAH-DONKOH: Can I have a brief moment, your
11 Honor.

12 THE COURT: You may.

13 BY MR. MINNAH-DONKOH:

14 Q. Mr. Weinberg, during your tenure with STRIVE, has
15 Mr. Carmona used foul language at any time in conversations
16 with you?

17 A. Indeed.

18 Q. Has Mr. Carmona ever yelled in conversations with you, a
19 male?

20 A. Yes.

21 Q. How frequently or how often would you say Mr. Carmona has
22 used foul language in communications with you, a male.

23 A. I would say fairly regularly.

24 MR. MINNAH-DONKOH: No further questions, your Honor.

25 THE COURT: Very well. Any cross?

D8SNJOH5

Weinberg - direct

1 MR. UMANSKY: Please, your Honor.

2 CROSS EXAMINATION

3 BY MR. UMANSKY:

4 Q. Good afternoon, Mr. Weinberg.

5 A. Good afternoon.

6 Q. We have never met before, correct?

7 A. Correct.

8 Q. We have never spoken before, correct?

9 A. Correct.

10 Q. You have previously given sworn testimony at a deposition
11 relating to this case on June 5, 2013, correct?

12 A. Correct.

13 Q. Mr. Weinberg, other than being the chief executive officer
14 of STRIVE, you are also a member of STRIVE's board of
15 directors, correct?

16 A. Correct.

17 Q. During your direct counsel spent about 40 minutes with you
18 discussing Ms. Johnson's performance issues.

19 Do you recall that?

20 A. I recall the questions.

21 Q. You never terminated Brandi Johnson for her performance
22 issues, did you?

23 A. No.

24 Q. You could have terminated Brandi Johnson in January of
25 2012, correct?

D8SNJOH5

Weinberg - cross

1 MR. MINNAH-DONKOH: Objection.

2 THE COURT: Overruled.

3 A. I don't follow the question.

4 Q. Could you have terminated Brandi Johnson if you wanted to
5 for her performance issues in January of 2012?

6 A. Brandi could have been terminated by her supervisor at that
7 time, I am sure.

8 Q. That answers my question.

9 Could you have terminated Brandi Johnson in February
10 of 2012 if you wanted to? Yes or no?

11 A. Possibly.

12 Q. Isn't it true that this case has nothing to do with Brandi
13 Johnson's performance issues?

14 MR. MINNAH-DONKOH: Objection.

15 THE COURT: Yes. That's really not true. As I
16 explained to the jury, and you were right here, some of this
17 has to do with performance issues. If you would like me to
18 tell them again, I will be glad to, but I doubt that you would
19 like that.

20 MR. UMANSKY: No, that's fine, your Honor.

21 BY MR. UMANSKY:

22 Q. You were also given Exhibit O by your attorney.

23 A. That's correct.

24 Q. That was the e-mail for regarding Brandi Johnson for the
25 personnel file?

D8SNJOH5

Weinberg - cross

1 A. Correct.

2 Q. Ms. Johnson never had an opportunity to review this e-mail,
3 did she?

4 A. Correct. It was just for the files.

5 Q. She was not cc'd on this e-mail, correct?

6 A. Correct.

7 Q. And she never had an opportunity to object or reply to this
8 e-mail, correct?

9 A. Correct.

10 Q. You also testified on direct that when you received a draft
11 complaint in April of 2012 you sprung into action, do you
12 recall that?

13 A. I do.

14 Q. And you spoke with Lisa Stein, you spoke with your board of
15 directors, and you also spoke with your pro bono counsel,
16 correct?

17 A. Correct.

18 Q. You understand pro bono to mean free, correct?

19 A. Correct.

20 Q. Your current attorneys, they don't work for free, correct?

21 MR. MINNAH-DONKOH: Objection. Relevance.

22 THE COURT: Sustained.

23 BY MR. UMANSKY:

24 Q. Mr. Weinberg, you already testified that you were in charge
25 of conducting the investigation into Ms. Johnson's claim of

D8SNJOH5

Weinberg - cross

1 race and gender discrimination, correct?

2 A. Correct.

3 Q. You were put in charge of that investigation by the board
4 of directors, correct?

5 A. Correct.

6 Q. When they put you in charge of that investigation, they
7 knew you didn't have a legal background, correct?

8 A. Correct.

9 Q. So they paired with you Andy Rahl, who is an attorney,
10 correct?

11 A. Correct.

12 Q. Mr. Rahl's legal background is in corporate law,
13 specifically bankruptcy and reconstructions, correct?

14 A. Correct.

15 MR. MINNAH-DONKOH: Objection.

16 Q. Mr. Rahl doesn't have any experience in employment
17 discrimination, does he?

18 THE COURT: Overruled. If you know.

19 A. I do not know.

20 Q. You shared the results of your investigation with the
21 board, Mr. Carmona, and plaintiff, correct?

22 A. Correct.

23 Q. But you didn't include Ms. Johnson in your investigation,
24 did you?

25 A. I tried to.

D8SNJOH5

Weinberg - cross

1 Q. Isn't it true that Ms. Johnson agreed to fully participate
2 in this investigation?

3 THE COURT: I am not sure I understand. The last
4 question was you shared the results of your investigation with
5 the board, Mr. Carmona and the plaintiff, correct? And you
6 answered correct. Isn't the plaintiff Ms. Johnson.

7 Q. You shared the results of the investigation with --

8 THE COURT: Yes.

9 Q. Isn't it true that Ms. Johnson agreed to fully participate
10 in this investigation, but simply requested that her attorneys
11 be present during any discussions?

12 A. That's not correct.

13 Q. In fact isn't it true that Ms. Johnson told you that she
14 would do, quote, anything to assist you with your
15 investigation, isn't that true?

16 A. Her actions did not follow those words.

17 THE COURT: I didn't understand your answer.

18 A. I am not aware that she said that, but she certainly did
19 not help in the investigation, your Honor.

20 Q. During your investigation, you and Mr. Rahl interviewed Rob
21 Carmona, correct?

22 A. Correct.

23 Q. You investigated Ms. Johnson's complaint that Rob Carmona
24 told Ms. Johnson "If I wanted this fucking door closed, I would
25 have fucking closed it myself," correct?

D8SNJOH5

Weinberg - cross

1 A. Correct.

2 Q. You questioned Ms. Stein regarding this incident, correct?

3 A. Correct.

4 Q. And Ms. Stein confirmed to you that Ms. Johnson was
5 agitated and upset when she complained to her about the way Rob
6 Carmona had spoken to her, correct?

7 MR. MINNAH-DONKOH: Objection, your Honor.

8 Outside the scope.

9 THE COURT: Sustained.

10 BY MR. UMANSKY:

11 Q. During the investigation you conducted, Rob Carmona also
12 told you that he said to Leticia Thomas, referring to her and
13 Ms. Johnson, "You guys are so alike, smart as shit, but so
14 dumb," correct?

15 MR. MINNAH-DONKOH: Note my objection again. Outside
16 the scope.

17 THE COURT: Sustained.

18 Q. During your investigation, Mr. Carmona never actually
19 admitted to calling Ms. Johnson a nigger, did he?

20 MR. MINNAH-DONKOH: Note my objection.

21 THE COURT: I will allow it.

22 A. He said that he could have used that language.

23 Q. But he did not recall using those words, did he?

24 A. He recalled using the word ghetto, but he suggested that he
25 could well have used that language.

D8SNJOH5

Weinberg - cross

1 Q. I asked you if he -- I asked you if Mr. Carmona admitted to
2 you calling Ms. Johnson a nigger?

3 A. The same answer, which is he did not think he used that
4 word, but he certainly thought he could have used that word.

5 Q. Mr. Weinberg, I would like you to pull up your deposition
6 testimony, which is Exhibit 6. It should be in one of those
7 big binders.

8 A. Exhibit 6. Plaintiff's Exhibit. Excuse me. OK.

9 Q. Let me know when you're done.

10 A. I'm there.

11 Q. Can you please turn to page 39, and I focus your attention
12 to line 12 to line 15.

13 Do you see that?

14 A. Line 12 through 15?

15 Q. Yes.

16 A. Yes.

17 Q. "Q Now, during the course of your conversation with
18 Mr. Carmona, did he admit to you that he called Ms. Johnson a
19 nigger?

20 "A. He did not. He did not recall using those words."

21 Do you recall being asked that question, and do you
22 recall giving that testimony?

23 A. Yes.

24 Q. You were telling the truth during your deposition, correct?

25 A. Yes.

D8SNJOH5

Weinberg - cross

1 Q. You had an opportunity to review your transcript of your
2 deposition after it was completed, correct?

3 A. Yes.

4 Q. You signed your name on that, correct?

5 A. Yes. This is my deposition.

6 Q. Mr. Carmona never actually admitted that he told
7 Ms. Johnson that she was acting like a nigger during your
8 investigation, did he?

9 A. I'm sorry. Repeat the question.

10 Q. During your investigation of Ms. Johnson's complaints,
11 Mr. Carmona never admitted to you that he stated to Ms. Johnson
12 that Ms. Johnson was acting like a nigger, did he?

13 A. He did not remember using those words.

14 Q. In fact, what he told you is that he may have used that
15 term, correct?

16 A. Correct.

17 Q. At some point you and the STRIVE board of directors learned
18 that Mr. Carmona did in fact call Ms. Johnson a nigger, isn't
19 that true?

20 MR. MINNAH-DONKOH: Objection.

21 THE COURT: Sustained.

22 Q. Rob Carmona wasn't terminated after you found out that he
23 called Ms. Johnson a nigger, was he?

24 MR. MINNAH-DONKOH: Objection.

25 THE COURT: Well, you can answer.

D8SNJOH5

Weinberg - cross

1 A. No.

2 Q. Isn't it also true that Rob Carmona told you that by
3 calling Ms. Johnson, as we now know, a nigger, he meant to
4 constructively support her professional growth?

5 A. Correct.

6 Q. And Rob Carmona was admonished by the board, correct?

7 A. Correct.

8 Q. You and the board of trustees gave Rob Carmona a talking
9 to, correct?

10 A. That's correct.

11 Q. Yet amazingly you and Andy Rahl conclude in your
12 investigation that Rob Carmona did not discriminate against
13 Ms. Johnson, isn't that true?

14 MR. MINNAH-DONKOH: Objection.

15 THE COURT: Overruled.

16 A. That is true.

17 Q. In fact, you yourself testified "in no way did I interpret
18 Rob's comment as being discriminating towards Brandi," isn't
19 that true?

20 A. True.

21 Q. You as the chief executive officer of STRIVE stand by your
22 findings because Rob Carmona and Ms. Johnson are people of
23 color, isn't that true?

24 MR. MINNAH-DONKOH: Note my objection.

25 THE COURT: I am not sure. I will sustain the

D8SNJOH5

Weinberg - cross

1 objection.

2 BY MR. UMANSKY:

3 Q. Isn't it true that you didn't find Rob Carmona's calling
4 Ms. Johnson a nigger, you didn't substantiate it because both
5 Ms. Johnson and Mr. Carmona are people of color?

6 MR. MINNAH-DONKOH: Objection.

7 THE COURT: Overruled. Is that right?

8 Do you understand that question?

9 THE WITNESS: I don't understand the distinction
10 between the two questions, so perhaps I need clarification.

11 BY MR. UMANSKY:

12 Q. One of the reasons that you did not find discrimination
13 based on Rob Carmona's conduct toward Ms. Johnson was because
14 both Ms. Johnson and Rob Carmona are people of color, isn't
15 that true?

16 A. We took context into consideration.

17 Q. Please go to your deposition, page 118, line 5. This is
18 going to page 119, line 3.

19 MR. MINNAH-DONKOH: Your Honor, I would note my
20 objection. This is invading the province of the jury.

21 THE COURT: 118, line 3?

22 MR. UMANSKY: 118 -- I'm sorry, your Honor.

23 118, line 5, to 119, line 3.

24 THE COURT: There comes a time when the Court has to
25 conclude that there is no prior inconsistency in the

D8SNJOH5

Weinberg - cross

1 statements, and I am there. Maybe you can point it out to me
2 amongst those 30 lines that you would like to read, and I'll
3 get it. It doesn't have to be much because it is their
4 problem, but if there's nothing that has to be my decision.

5 MR. UMANSKY: It goes between line 12 and really
6 towards 119, line 3.

7 THE COURT: Let me read these fewer lines.

8 I don't think so. I think we will pass on that one.

9 MR. UMANSKY: OK.

10 Q. Mr. Weinberg, even after you listened to the recording of
11 Rob Carmona calling Ms. Johnson a nigger, you weren't surprised
12 by that, correct?

13 MR. MINNAH-DONKOH: Note my objection.

14 THE COURT: Overruled.

15 A. Correct.

16 Q. In fact, you actually agreed with Rob Carmona that he
17 called Ms. Johnson a nigger to support her personal growth,
18 isn't that true?

19 MR. MINNAH-DONKOH: Objection.

20 THE COURT: I think you have done this. Been there.

21 BY MR. UMANSKY:

22 Q. Isn't it also true that you testified that Rob Carmona
23 calling Ms. Johnson a nigger was not any less effective than
24 the language you would use when providing constructive
25 criticism, isn't that true?

D8SNJOH5

Weinberg - cross

1 MR. MINNAH-DONKOH: Objection.

2 THE COURT: Sustained.

3 BY MR. UMANSKY:

4 Q. After Ms. Johnson complained of race and gender
5 discrimination, isn't it true that STRIVE retaliated against
6 her?

7 MR. MINNAH-DONKOH: Objection.

8 THE COURT: Overruled.

9 A. Absolutely not.

10 Q. On May 7, 2012, after Dwayne Hubbard visited Ms. Johnson,
11 you immediately implemented a policy that states in sum and
12 substance, no former STRIVE personnel are to be allowed on site
13 unless you provide prior approval, isn't that true?

14 MR. MINNAH-DONKOH: Objection. Outside the scope.

15 THE COURT: Sustained.

16 BY MR. UMANSKY:

17 Q. Aside from Ms. Johnson complaining about being called a
18 nigger, she made numerous other complaints, isn't that true?

19 A. That is correct.

20 Q. At one point Ms. Johnson, Cammie Crawford, and Lynette
21 Thomas were having lunch outside Mr. Carmona's office, correct?

22 THE COURT: Oh, my God.

23 MR. MINNAH-DONKOH: Objection.

24 THE COURT: I don't --

25 MR. UMANSKY: I promise, your Honor. We are not going

D8SNJOH5

Weinberg - cross

1 too much into those.

2 THE COURT: Yes. Well, take five minutes to go
3 through it at the most, because we have all heard it from time
4 immemorial in this lawsuit. I won't characterize it.

5 BY MR. UMANSKY:

6 Q. Do you recall that incident?

7 A. If you could repeat the question, please.

8 Q. Do you recall the incident when Ms. Johnson, Cammie
9 Crawford, and Lynette Thomas were having lunch outside Rob
10 Carmona's office?

11 A. I do recall that.

12 Q. At that time Rob Carmona told them to wrap it up, correct?

13 MR. MINNAH-DONKOH: Objection. Personal knowledge.

14 THE COURT: He doesn't know. But for his being here,
15 he doesn't know it. If you would like to --

16 BY MR. UMANSKY:

17 Q. Isn't it true that Ms. Johnson, Cammie Crawford, and
18 Lynette Thomas came to you and told you they were uncomfortable
19 with that comment?

20 A. Two of those women I did have a conversation with and
21 shared their discomfort with that episode.

22 Q. You substantiated that complaint, didn't you?

23 A. I certainly substantiated that they felt uncomfortable by
24 it.

25 Q. Immediately after that STRIVE implements a policy of no

D8SNJOH5

Weinberg - cross

1 congregating at the workspace for lunch, correct?

2 MR. MINNAH-DONKOH: Objection.

3 THE COURT: Sustained.

4 BY MR. UMANSKY:

5 Q. Do you recall Mr. Carmona's testimony earlier today?

6 A. I do.

7 Q. Do you recall Mr. Carmona testifying that the policy of no
8 congregating at the workspace for lunch was already in place?

9 MR. MINNAH-DONKOH: Objection.

10 THE COURT: Do you recall that testimony? You can
11 answer yes or no.

12 THE WITNESS: I recall the testimony.

13 BY MR. UMANSKY:

14 Q. Isn't it true that that policy was implemented after
15 Ms. Crawford, Ms. Thomas, and Ms. Johnson came to you in
16 regards to the wrap-it-up comment?

17 MR. MINNAH-DONKOH: Objection.

18 THE COURT: Sustained.

19 BY MR. UMANSKY:

20 Q. Isn't it true that you also substantiated Ms. Johnson's
21 complaint of the door being slammed on her?

22 A. That's not true. That's not how I would characterize that
23 incident.

24 Q. Please turn to your deposition testimony, page 220.

25 THE COURT: Do you have a line?

D8SNJOH5

Weinberg - cross

1 MR. UMANSKY: You know what, your Honor, I am not
2 going to go with that.

3 Q. Isn't it you also true that after Rob Carmona slammed the
4 door on Ms. Johnson, she was so distraught she went home?

5 MR. MINNAH-DONKOH: Objection.

6 THE COURT: If you know what Ms. Johnson did after
7 that experience, you should tell us. Even if you know where
8 her home, is it would be nice, but I doubt you know any of
9 those answers, so I will sustain the objection.

10 BY MR. UMANSKY:

11 Q. Didn't you in fact testify that you have never seen
12 Ms. Johnson so emotional?

13 A. Are we speaking about this incident or a different incident
14 now?

15 Q. Speaking about the incident where Rob Carmona slammed the
16 door on Ms. Johnson? Isn't it true that you testified that
17 never seen Ms. Johnson so emotional?

18 A. I am sure I did.

19 Q. In fact, in your opinion, Ms. Johnson was so disturbed and
20 emotional that Carmona slammed the door on her that you
21 described her to be in a heightened state of anxiety, correct?

22 MR. MINNAH-DONKOH: Objection.

23 THE COURT: If you did that, you can answer.

24 A. I don't recall how I described her. I recall that she was
25 upset, emotional, distraught, loud, making outbursts, and I

D8SNJOH5

Weinberg - cross

1 invited her into my office so we could have a discussion about
2 this situation and also to pull her conduct outside of the
3 workspace.

4 Q. Mr. Weinberg, yes or no, did you not describe Ms. Johnson's
5 emotional state at that point as in a very heightened state of
6 anxiety?

7 MR. MINNAH-DONKOH: Objection. Asked and answered.

8 THE COURT: Answer it again. It's cross-examination.

9 A. If there are certain words in my deposition you would like
10 me to refer to, I would be happy to look at them. I don't
11 recall the exact language that you are specifying.

12 Q. I would refer you to those specific words, page 163?

13 THE COURT: Oh, please. You already have from him the
14 heightened state of emotion.

15 MR. UMANSKY: Fine. Let's move on, your Honor.

16 BY MR. UMANSKY:

17 Q. This all occurred after Ms. Johnson came back from a
18 two-week leave, correct?

19 MR. MINNAH-DONKOH: Objection. Outside the scope.

20 THE COURT: I will allow it. If you know, if you
21 remember.

22 A. If my memory serves me correctly, Ms. Johnson, Brandi was
23 not on a two-week leave.

24 Q. Isn't it true that Ms. Johnson was out from May 14 to May
25 29?

D8SNJOH5

Weinberg - cross

1 A. She had requested an accommodation to work from home, and I
2 had granted that accommodation. I would not characterize her
3 working from home as a leave.

4 Q. But she was working from home from May 14 to May 29,
5 correct?

6 A. Correct. However you characterize it.

7 Q. Only after one week after returning to the office, you
8 instructed Ms. Johnson to work from home again, isn't that
9 true?

10 MR. MINNAH-DONKOH: Objection. Outside the scope.

11 THE COURT: Sustained.

12 BY MR. UMANSKY:

13 Q. Isn't it true that you also substantiated Ms. Johnson's
14 complaint that Rob Carmona told her coworkers not to be used by
15 her?

16 MR. MINNAH-DONKOH: Objection.

17 THE COURT: I will allow it. I think we're going to
18 be finished here shortly. You can answer it. I know we are
19 going to be finished here shortly.

20 A. Yes. When I spoke to -- when Brandi brought that incident
21 to my attention, I immediately wanted to talk to the other
22 women involved in that, and at that point they informed me that
23 Rob had made those comments.

24 Q. After STRIVE was served with Ms. Johnson's complaint of
25 race and gender discrimination, there were at least five

D8SNJOH5

Weinberg - cross

1 incidents in which Ms. Johnson complained to you, correct?

2 MR. MINNAH-DONKOH: Objection.

3 THE COURT: Sustained.

4 This isn't your summation, in case you thought you
5 were going to go through them again.

6 BY MR. UMANSKY:

7 Q. Mr. Weinberg, the Pathways Out of Poverty grant ended on
8 June 30, 2012, correct?

9 A. Correct, thereabout.

10 Q. Yet Ms. Johnson was let go on June 11, 2012, correct?

11 A. Corrects.

12 Q. That was four days after she filed a lawsuit in this case,
13 correct?

14 MR. MINNAH-DONKOH: Objection.

15 THE COURT: Overruled.

16 A. If you would like to know the timing, I was made aware --

17 Q. I'm not asking for the timing. I said wasn't she let go on
18 June 11, four days after she filed a lawsuit in this case?

19 A. I was made aware of a lawsuit on June 11, after I had a
20 conversation with Brandi about her position ending.

21 Q. It was your decision to terminate -- to let go of
22 Ms. Johnson, correct?

23 A. That's correct.

24 Q. You consulted with Ms. Lisa Stein regarding that decision,
25 correct?

D8SNJOH5

Weinberg - cross

1 A. I did not.

2 Q. You did not. Turn to your deposition page 242, lines 7
3 through 17.

4 MS. KREBS: I'm sorry, the lines?

5 MR. UMANSKY: 7 through 17.

6 MS. KREBS: Which page?

7 MR. UMANSKY: 242. "Question" --

8 MR. MINNAH-DONKOH: May I place my objection, please.

9 Your Honor, to place this in context I would also
10 request that plaintiff's counsel read from page 241, line 25 --

11 MR. UMANSKY: Your Honor, this is a giant waste of
12 time.

13 MR. MINNAH-DONKOH: I agree with that.

14 MR. UMANSKY: The question was whether he consulted
15 with Lisa Stein. That answers it right there.

16 THE COURT: Let me read it so I can see the magnitude.
17 We just heard -- no, go right ahead. You read what you think
18 is a prior inconsistent statement.

19 MR. UMANSKY: Thank you, your Honor.

20 "Q. Was that decision discussed with anyone?

21 "A. I'm sure that it was. It was my decision. It was my
22 conversation with Brandi. Lisa was our CFO and had been
23 supervising that project. I am sure I had consultations with
24 Lisa Stein on that.

25 "We certainly have our counsel who advises us on many

D8SNJOH5

Weinberg - cross

1 of our employment-related issues, and I'm sure I sought
2 counsel's guidance on that as well."

3 Were you asked that question and did you give that
4 answer?

5 A. Correct.

6 Q. So did you, in fact, consult with Lisa Stein?

7 THE COURT: Sustained. It speaks for itself. I think
8 we don't have to beat it to death.

9 BY MR. UMANSKY:

10 Q. Isn't it true that you in fact terminated Ms. Johnson's
11 employment in retaliation for her multiple complaints of
12 discrimination?

13 MR. MINNAH-DONKOH: Objection.

14 THE COURT: Sustained.

15 BY MR. UMANSKY:

16 Q. Mr. Weinberg, today Rob Carmona continues to advocate on
17 behalf of STRIVE, is that correct?

18 A. That's correct.

19 Q. Rob Carmona participates in fundraisers and asks for
20 donations, correct?

21 A. That's correct.

22 Q. In fact, if you were going to the STRIVE website, you would
23 see a giant photo of Rob Carmona, and next to that it says
24 donate today?

25 A. I think we have a video on our home page. It might be

D8SNJOH5

Weinberg - cross

1 Rob's face that is on the frame, but that would be generally
2 correct.

3 Q. Before you click on the video, you would see his face,
4 correct?

5 A. I believe that's the case.

6 Q. The face of your organization is Rob Carmona. That's
7 correct?

8 A. Rob is a very prominent face in our organization.

9 MR. UMANSKY: No further questions.

10 THE COURT: You're excused.

11 MR. MINNAH-DONKOH: Brief redirect, your Honor?

12 THE COURT: No.

13 (Witness excused)

14 THE COURT: What's next?

15 MS. KREBS: Your Honor, the defense rests.

16 THE COURT: Very well. That's exciting.

17 What I think we will do, since it's 10 of 4 and we
18 haven't had a recess at all, is we will let you go home. We
19 will have a charging conference. We'll get everybody in the
20 counsel world ten minutes to get together. I am just trying to
21 figure out when to ask you to come in.

22 I suppose, to be safe, if you come in at 10:30 we will
23 be ready for summations and charge. I think that will work.

24 Both sides rest, right? I don't want to start this
25 over again.

D8SNJOH5

Weinberg - cross

1 MS. MESIDOR: Plaintiffs rest, your Honor.

2 THE COURT: The defendant has, so I think that will
3 work.

4 I don't know when we'll finish, but the United States
5 will buy your lunch. Have a good evening. Don't discuss this
6 case amongst yourselves or with anybody else. We will see you
7 at 10:30. Come a little earlier so Bill can order your
8 three-star choices.

9 The case is not yours, yet so don't discuss it.

10 (Jury not present)

11 THE COURT: OK. Why don't we do this, if you all are
12 still on your feet here after the day. Why don't we have a
13 charging conference in my robing room in about 15 minutes, if
14 that's doable. Maybe we'll finish by 5:30, maybe we won't. If
15 we have to go further, we have a little extra time.

16 Does that sound OK to all of you?

17 MS. MESIDOR: That is fine for plaintiff, your Honor.

18 MS. KREBS: Yes, your Honor.

19 THE COURT: Very well. We will see you at 5 after 4.

20 (Recess)

21 (In the robing room)

22 THE COURT: I think I mentioned this to you at the
23 outset that indeed I would mark your verdict sheets and
24 requests as court exhibits. I have done that already. So that
25 the defendants proposed verdict sheet is Exhibit C, and the

D8snjoh5

Charge Conference

1 defendants proposed verdict sheet on punitive damages is D and
2 plaintiff's requests D and the plaintiff's proposed verdict
3 sheet is E, and the defendants' requested jury instructions is
4 A.

5 They are all court exhibits and should make it easier
6 for us at the end of the charge when I ask you to come up with
7 any additions or corrections. You will know that anything
8 that's in any of what you have provided me is objected to if
9 not utilized by me, which I presume is the only reason you
10 would object.

11 I will provide you momentarily with the first 15 pages
12 of my charge. What I have done is I have taken your material
13 and essentially condensed it, which is a good word for what I
14 to a degree achieved in connection with this particular
15 lawsuit. But I'm only going to do the first 15 pages with you.
16 You will understand what that is when he comes. But they are
17 the boilerplate portion of the charge.

18 The substantive portion, which in my proposed charge
19 is another 15 page, we will do at 9:30 tomorrow morning.
20 Actually it's another 16 pages. But I presume that we won't
21 have a lot of trouble with the boilerplate, and I really don't
22 feel like going over the others if I can avoid it in the late
23 afternoon and early evening.

24 You have copies of the boilerplate portion?

25 THE DEPUTY CLERK: Yes.

D8snjoh5

Charge Conference

1 MS. KREBS: Your Honor, may I ask you a question?

2 THE COURT: Anything. You can make any motion you
3 would like to make again at the end of the plaintiff's case.
4 The plaintiff might want to make a motion.

5 MS. KREBS: I just have --

6 THE COURT: Go ahead. I don't want you to lose your
7 place.

8 MS. KREBS: I just had an orchestral question. The
9 next 15 or 16 pages that we are going to be discussing tomorrow
10 morning, are you going to give that to us to consider this
11 evening? Give it to us before we leave today?

12 THE COURT: No. Because I haven't considered it. So
13 we are going to all consider it tomorrow together. If I finish
14 it tonight -- I'm not going home when we finish but I am not
15 staying very late. If we finish it, I will be glad to e-mail
16 to each of you, assuming you are going back to work.

17 MS. KREBS: I doubt I am going home yet, your Honor.

18 THE COURT: OK. So I will do that if I possibly can
19 to each of you so that you will have it with you in the
20 morning, as well as the verdict sheet that I propose. But
21 right now I just want to go through the boilerplate, which
22 includes all of your thoughts, albeit in a form that's more at
23 least reminiscent of my charge.

24 We can start on page 3, if you see a problem, which is
25 a standard part 1 or the beginning of part 1 of a civil charge,

D8snjoh5

Charge Conference

1 and just keep rolling right along. When you have a problem or
2 a concern or a question, just ask me.

3 (Continued on next page)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

D8snjoh5

Charge Conference

1 (In the robing room)

2 THE COURT: Any concerns anyone has ought not keep
3 quiet.

4 MS. MESIDOR: Your Honor, we do have one concern on
5 page 14 of the instructions on the law in regard to the claim
6 of action, your Honor.

7 Let me know when you are there, Judge, and I will.

8 THE COURT: Excuse me?

9 MS. MESIDOR: Let me know when you are there.

10 THE COURT: This is the time.

11 MS. MESIDOR: I just wanted to make sure you were on
12 the same page I was. It is the first full paragraph where it
13 indicates that for the purposes of this case Section 1981 and
14 the New York City Human Rights Law apply the same standard for
15 determining liability, and our concern because this is a
16 hostile work environment case under Federal Law Section 1981,
17 the standard for hostile work environment should be pervasive
18 where as to the New York City Human Rights Law, the standard
19 for hostile work environment is a petit, slight or trivial
20 inconvenience. I believe in the jury instructions that we had
21 submitted to your Honor when we divided each claim up, we
22 provided the necessary case law for each of the articulated
23 standards.

24 THE COURT: This is really sort of an overview. When
25 we get into the specific discriminatory or retaliatory sections

D8snjoh5

Charge Conference

1 of the law, we will have made that clear.

2 MS. MESIDOR: Your Honor, is it possible for that one
3 sentence not to be there. Everything else I think supports
4 what your Honor just stated about what the specific claim was
5 and how each statute prohibits -- one statute prohibits race
6 claims and the other statute can prohibit race and gender
7 claims and alike. That way if the jury is comparing one
8 instruction to the other, there is no sense of confusion that
9 the same standard would apply for the hostile work environment
10 case.

11 THE COURT: So what would you take out?

12 MS. MESIDOR: I would take out, For the purposes of
13 this case Section 1981, the New York City Human Rights Law,
14 apply the same standard for determining liability. That would
15 be the own portion that I would take out.

16 THE COURT: I will be glad to think about it in terms
17 of the balance of the charge.

18 MS. KREBS: The defendants have no objection to the
19 language. We were very happy with that.

20 MR. MINNAH-DONKOH: We would refer to the case law
21 that defendants cited with respect to request to charge 18 of
22 their request Footnote 18.

23 THE COURT: To their request?

24 MR. MINNAH-DONKOH: No defendants, our requests.

25 MS. KREBS: In considering it. Obviously it is not

D8snjoh5

Charge Conference

1 something that needs to be looked at right now. We want to
2 make reference to it.

3 THE COURT: We only have one more page here. We may
4 as well look at it. I assume that the plaintiff has looked at
5 your charges as well as her own. What is it that 18 is going
6 to do for me?

7 MR. MINNAH-DONKOH: That they are analyzed under the
8 same legal standard.

9 THE COURT: I don't think there is any question about
10 that, but she seems to think there is a way in which
11 distinguished, which I don't know about. I gather you don't
12 think there is any distinction?

13 MR. MINNAH-DONKOH: No, your Honor.

14 THE COURT: The defendants do not share your view.

15 MS. MESIDOR: It wouldn't be the first time, your
16 Honor.

17 MS. KREBS: Nor will it be the last time.

18 THE COURT: I will look and see. Their 18th request
19 apparently, although I haven't found it, provides some law that
20 they are analyzed, Footnote 18.

21 MS. MESIDOR: We have clear case law. If I can give a
22 little background, your Honor. The New York City Human Rights
23 Law and the Restoration Act of 2005 updated its standard
24 specifically for the hostile work environment and further
25 elaborated the statute. The cases that defendants cite here

D8snjoh5

Charge Conference

1 are all pre2005 and therefore in applicable as it relates to a
2 determination of the New York City Human rights Law issue as it
3 relates specifically to the hostile work environment.

4 The only case that defendants submit that is after
5 2005 is a 2009 case that just does a comparison between the
6 elements of the strict discrimination claim. Our issue is not
7 that there is a difference between the elements for strict
8 discrimination claim between Section 1981 and New York City
9 Human Rights Law. Our only issue is that as it relates to the
10 standard of what needs to be proven to prove a hostile
11 environment that those two standard are separate and distinct
12 and the case law that defendants have cited do not cover that
13 issue. Primarily I already stated four of them are pre2005.

14 THE COURT: I heard it once. You must be back there
15 in front of the jury.

16 MS. MESIDOR: I am sorry, your Honor.

17 THE COURT: At least for me you can understand I get
18 it the first time. You may not feel that way about the jury.

19 I will be glad to look at the Pilgrim and see if you
20 are right. That is the case from 2009 wherein they talk about
21 as you suggest the standard for all the Title 7, Section 1981
22 and the Human Rights Law and CHRL are the same. I gather you
23 are saying that your concern is somewhat different.

24 MS. MESIDOR: Yes, your Honor. We also cited to
25 Zakrewska v. New School, which is also a 2009 case.

D8snjoh5

Charge Conference

1 THE COURT: I have yours. Why don't I look at your
2 charges.

3 MS. MESIDOR: Coincidentally my charge and my case law
4 in this that regard is actually on page 18.

5 THE COURT: Should I find your charge that will make
6 it easy. Employer liability, is that where it is?

7 MS. MESIDOR: It is right above that section. Hold on
8 one second, your Honor.

9 THE COURT: You have almost all last century cases,
10 right?

11 MS. MESIDOR: One second, your Honor. I might have
12 misspoke.

13 THE COURT: They are earlier than the defendants'
14 cases.

15 MS. MESIDOR: Your Honor, beginning on page 14.

16 THE COURT: 14.

17 MS. MESIDOR: Not 18. My apologies.

18 THE COURT: Where are the cases that you think I ought
19 to read?

20 MS. MESIDOR: They are immediately following the last
21 sentence on page 14. They are all on page 15. It cites to the
22 clear statute and it also cites to two cases that are
23 interpreting the New York City Human Rights Law. One is a 2006
24 case the other is a 2009 case.

25 THE COURT: Zakrewska v. New school?

D8snjoh5

Charge Conference

1 MS. MESIDOR: Yes.

2 THE COURT: That is a 2009 case. I don't see a 2006
3 case.

4 MS. MESIDOR: Immediately in the paragraph right above
5 it.

6 THE COURT: Williams.

7 MS. MESIDOR: Farrugia v. Williams.

8 THE COURT: I know Farrugia. That is a state case.

9 MS. MESIDOR: Only because usually New York City human
10 rights claims are brought in state courts unless there is some
11 kind of federal claim they can bring it.

12 THE COURT: I am glad to look at both your cases and
13 theirs.

14 Any other boilerplate problems that we can take back
15 to chambers with us?

16 MS. KREBS: Your Honor, I just had a few requests for
17 some language insertions from our proposed instructions. I
18 think what the easiest thing to do is just identify this page,
19 this paragraph of what we would prefer to have in and there are
20 a few locations.

21 THE COURT: Sure.

22 MS. KREBS: I am now referring to Court Exhibit A,
23 which was our proposed jury instructions. From page 14, the
24 last paragraph on page 14, we would request that that paragraph
25 or language similar to that would be inserted at the end of the

D8snjoh5

Charge Conference

1 instruction -- at the end of instruction regarding direct and
2 circumstantial evidence, which end on page 8 of your Honor's
3 proposed charge.

4 THE COURT: Let me read it just so I can tell you if I
5 will be with you right away.

6 No thank you. Denied.

7 What else?

8 MS. KREBS: From page 15 to 16 in Court Exhibit A
9 discussing the fact that certain witnesses when they believe
10 one part of it may not believe the other part of it and you are
11 allowed to make choices, infer if one part is untrue that the
12 other part is untrue or not. I think that is something that is
13 important.

14 THE COURT: I thought probably I had it in my charge.

15 MS. KREBS: I did not see that. Your Honor's proposed
16 charge on witness credibility is on page 9.

17 THE COURT: No. It is not in there. There is a
18 charge that talks about you can believe some or none of the
19 testimony of a witness whose credibility has been impeached.
20 It is essentially saying what this says but I will be glad to
21 utilize this language if I think I missed it.

22 MS. MESIDOR: Your Honor, what portion of their
23 language are you saying you are going to utilize?

24 THE COURT: The last paragraph of 15, Court Exhibit A
25 and the first two lines on 16.

D8snjoh5

Charge Conference

1 MS. MESIDOR: Your Honor, there is a portion of that
2 that does not have to do with what your Honor just indicated.
3 For instance, they say two or more persons witnessing an
4 incident or transaction may hear it differently and innocent
5 misrecollection like failure to recollect is not an uncommon
6 experience. That additional language, your Honor, is a little
7 bit different than believing one portion of it and not
8 believing another. It provides or it guides a level or an
9 inference for the jurors that the portion of your Honor's
10 instructions does not do.

11 MS. KREBS: We do believe that that part of it as well
12 as the following paragraph on page 16 --

13 THE COURT: Of the whole paragraph?

14 MS. KREBS: No. It was the first paragraph. Two
15 paragraphs, your Honor. The first one starts at the bottom of
16 page 15 and then the next one continues at the top of page 16
17 and all of the contents in it I think are important for a jury
18 to understand.

19 THE COURT: I am sure that the second paragraph or the
20 first full paragraph on 16 is part of my charge.

21 MS. KREBS: Thank you, your Honor. I did look and I
22 apologize if I missed it, but I looked and I didn't see it.

23 THE COURT: I will tell you in the morning before you
24 need to apologize.

25 MS. KREBS: Thank you, your Honor.

D8snjoh5

Charge Conference

1 THE COURT: That is my guess it should be there.

2 MS. KREBS: I would have anticipated it would be on
3 page 9 and I didn't see it. That's all, your Honor.

4 THE COURT: That certainly should be there so it will
5 be.

6 MS. KREBS: Thank you, your Honor.

7 MS. MESIDOR: Which section, your Honor?

8 THE COURT: Do you have something?

9 MS. MESIDOR: I didn't hear what section. You said it
10 certainly should be there and would be.

11 THE COURT: The balance of the second paragraph. The
12 first paragraph we're going to think about. After making your
13 own judgment paragraph will certainly be there.

14 MS. MESIDOR: Thank you.

15 MS. KREBS: The only other request that we have is an
16 instruction in accordance that was proposed on page 23, the
17 last several sentences.

18 THE COURT: Of your charge.

19 MS. KREBS: Of my proposed charges, your Honor. To
20 make sure that the jurors are aware to not treat companies any
21 differently than they treat people.

22 THE COURT: That certainly ought to be there, too.

23 MS. KREBS: There is a charge, which certainly will be
24 included which says that everybody is treated equally whether
25 man, woman or entity.

D8snjoh5

Charge Conference

1 Thank you, your Honor.

2 THE COURT: Anything from plaintiff on the boilerplate
3 charges?

4 MS. MESIDOR: No, your Honor.

5 THE COURT: Then we will resolve these concerns. If I
6 can hang in there until I finish the substantive charges, I
7 will send them all to you.

8 MS. MESIDOR: Your Honor, I have one procedural
9 question. I believe what I understood that you said that if
10 there were any additional instructions that we wanted you to
11 consider that there would be an opportunity to provide that.
12 Did I hear that right?

13 THE COURT: I never said that, but I will certainly
14 look at anything that you send me.

15 MS. MESIDOR: Thank you.

16 THE COURT: I would like to know what your view is
17 about summation time so that we can figure out what to do about
18 ordering lunch and marshals and things like that.

19 MS. KREBS: Your Honor, before we move onto that, is
20 it possible for us to return for a moment to an issue that
21 arose in the court today that I can request further
22 clarification.

23 THE COURT: Sure.

24 MS. KREBS: During the examination of Mr. Weinberg,
25 there was a point in time where your Honor indicated that we

D8snjoh5

Charge Conference

1 were not allowed to put in exhibits that connected to the
2 investigation that was done in response to Ms. Johnson's
3 complaints.

4 THE COURT: That you couldn't, the plaintiff could.

5 MS. KREBS: Yes. However, it was our understanding
6 that that ruling was -- let me take a step back. Your Honor
7 had given us instructions either directly and/or through your
8 law clerk. There were several exhibits that were in both lists
9 and we were therefore to identify which ones were and eliminate
10 from one of the lists one set that was duplicative and you
11 would rule on the other set.

12 THE COURT: I did that primarily so that there
13 wouldn't be overlapping of exhibits not because of rulings.

14 MS. KREBS: Yes. But in terms of overlapping of
15 exhibits so you would indicate one was out and the other one
16 would be in. That was our understanding.

17 THE COURT: No. I don't think it directly matters.
18 All I didn't want was two Xs that were the same as 8s. So I
19 was anxious that you had together put one set of exhibits, but
20 indeed I was going to rule as to who it was that was
21 introducing or may seek to introduce them. So that if the
22 plaintiffs took numbers and the defendant took letters, I would
23 look at them and rule depending on which they were if they were
24 the plaintiff or defendant.

25 MS. KREBS: I apologize. That was not our

D8snjoh5

Charge Conference

1 understanding. We thought you were only going to be ruling if
2 there were duplicates on each one once and say if the document
3 was acceptable and the stipulated to then you would agree that
4 it would be in for all and you would just have it out on the
5 other list so there would be no duplication.

6 THE COURT: None of that makes any sense to me, but I
7 mean I can tell you once more what I was doing. With respect
8 to the two recordings I let in, they were both agreed to both
9 of you. So I didn't really try and understand what they said,
10 which was not always easy. But in any event with respect to
11 the wanting separate exhibits, it was simply your thought is
12 more much more complicated than I am and my operation is, which
13 is all I wanted do as I said was have 1, 2, 3, 4 and A, B, C,
14 D. So the A, B, C, D was the defendants and the 1, 2, 3, 4 was
15 the plaintiff's and never between shall meet. Then I ruled on
16 the plaintiff exhibits and the defendant exhibits separately.

17 MS. KREBS: I apologize, your Honor. That was not our
18 understanding and therefore when we saw that it was in on
19 plaintiff's list, it was our understanding that it was in
20 because both had put them on their list and therefore both had
21 indicated that they should be -- the documents should be
22 allowed into evidence.

23 THE COURT: That was not true if in deed you
24 misunderstood me. I thought I made it clear as to what my
25 concern was so that if the plaintiffs had introduced it, it

D8snjoh5

Charge Conference

1 would not have been hearsay because it would have been party
2 admissions. It was not in that situation when you sought to
3 admit it.

4 MS. KREBS: Yes, your Honor. We would like the
5 opportunity to submit an application of additional support to
6 allow the documents relating to the investigation in.

7 THE COURT: That final report that I didn't let in, is
8 that we're talking about?

9 MS. KREBS: The report and investigation notes that
10 were taken by Mr. Weinberg, which my colleague once you said
11 nothing relating to the investigation would be allowed in no
12 longer pursued.

13 THE COURT: I am glad to look at them. I don't
14 remember any discussion about the notes at all, but maybe I had
15 an umbrella.

16 MS. KREBS: That was our understanding that your
17 ruling on that because it all this had to do with the
18 investigation and it was all from defendants' side that you
19 were applying the ruling to all of the documents relating to
20 the investigation.

21 THE COURT: I doubt it because there is a separate
22 number for the notes I presume.

23 MS. KREBS: But the ruling that you gave in and the
24 explanation that you gave was identical to all of the documents
25 relating to the investigation.

D8snjoh5

Charge Conference

1 THE COURT: If you thought it covered all the
2 documents, I will be glad to look at them again.

3 MS. KREBS: Thank you. Your Honor, we wanted to have
4 the opportunity to do that given the nature of not only the
5 case but of the affirmative defenses that exist.

6 MS. MESIDOR: Your Honor, if that is indeed the case,
7 does that mean we're reopening the examination of Mr. Weinberg?

8 THE COURT: No. We just take the piece of paper into
9 the jury.

10 MS. MESIDOR: The reason I ask --

11 THE COURT: That's the answer, though. You asked and
12 the answer is no.

13 MS. MESIDOR: Okay.

14 THE COURT: But for an exhibit or perhaps two or
15 perhaps none.

16 MS. MESIDOR: Okay.

17 THE COURT: Shall we come back to my concern now as to
18 the length of summations? The defendant goes first but
19 nonetheless I would be glad to hear what the defendants'
20 timetable is and the plaintiff's timetable. If you have an
21 approximation not that I will not hold you to it, but an
22 approximate is okay for moment.

23 MS. KREBS: Our approximation is that we will expect
24 perhaps an hour.

25 THE COURT: What does the plaintiff think?

D8snjoh5

Charge Conference

1 MS. MESIDOR: Probably 30 to 45 minutes, your Honor.

2 THE COURT: So if we start at 10:30, 11:30. So we can
3 certainly go a little longer here. We can certainly have lunch
4 by 12:00 or I can charge. But I will figure that out. It is
5 not your problem. We'll see you at 9:30 in the morning and
6 we'll make an effort to examine all your concerns as well as
7 get you copies of substantive charges before the end of the
8 night, but I guarantee you nothing.

9 MR. MINNAH-DONKOH: One quick question with respect to
10 the verdict sheet. To the extent we wish to use it during
11 summation, will we be given sufficient time tomorrow or tonight
12 to see the Court's final verdict sheet?

13 THE COURT: I have a verdict sheet, but I really
14 haven't looked at it carefully. Where is it? Didn't you give
15 me one? Let me look at it and maybe we can do it right here
16 while we're here. I am not sure of how much of this, but I
17 only have one copy so why don't I look at it more carefully and
18 send it to you.

19 MR. MINNAH-DONKOH: Thank you, your Honor.

20 MS. MESIDOR: Thank you.

21 THE COURT: Anything else?

22 MS. KREBS: No, your Honor.

23 THE COURT: Anything from the plaintiff?

24 MS. MESIDOR: No, your Honor. Thank you.

25 (Adjourned to August 29, 2013, at 9:30 a.m.)

INDEX OF EXAMINATION

Examination of: Page

LISA STEIN

Cross By Ms. Mesidor 323

Redirect By Ms. Krebs 358

Direct By Ms. Krebs 375

Cross By Mr. Umansky 406

Redirect By Ms. Krebs 452

PHILIP WEINBERG

Direct By Mr. Minnah-Donkoh 457

Cross By Mr. Umansky 489

PLAINTIFF EXHIBITS

Exhibit No. Received

XX 327

YY 357